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by Steven Greenhut

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IDEAS ON LIBERTY

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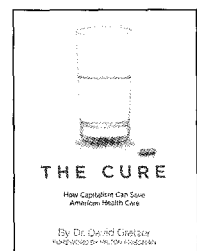
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Perspective

A Matter of Priorities

'T is the political season, which means the season to bash immigrants. This goes especially for so-called "illegal aliens," that is, residents without government papers. (As if that's a big deal.)

Candidates and others who are set on securing the Mexican border—the Canadian border seems of less concern—and expelling those who had the audacity to come to the land of the free without permission mainly rely on two arguments: jobs and welfare. If those are the best arguments they've got, they don't have much.

The first is easily dismissed. Any free-market advocate knows that what is in short supply is not work but workers—if government does not interfere with individual freedom. This is not news, but just another way of saying that we live in a world of scarcity. Free people can loosen the bonds of scarcity, but can never eliminate them. This will be true as long as a quantity of resources put to one purpose can't simultaneously be put to some other purpose. Under freedom long-term involuntary unemployment is impossible. If tomorrow we need only half the number of people it takes today to make a steady supply of some product, we'll be able to afford things we can't afford today and our living standard will rise.

To be sure, we live in a society blanketed by government intrusion that ossifies labor and other markets in a variety of ways: taxes, minimum-wage laws, occupational licensing, anticompetitive favors to business, union laws, and more. Such interventions may make it tougher for unskilled or low-skilled workers to find new jobs if the old ones are lost to someone willing to work for less. The wrong way to address that problem, though, is to go after immigrants who are "taking jobs from Americans." The moral claim to freedom, including the freedom to deal with those who have jobs to offer, should not be a function of where one was born. It's a function of being human, no matter the birthplace. Let's free the markets rather than restrict the freedom of individuals.

A similar point applies to welfare. I don't know what percentage of immigrants, "legal" and otherwise, take benefits provided by the state. Everyone can cite a study to support his intuitions on the matter. Such cherry-picking of data always makes me uncomfortable.

Fortunately, we don't need data on an issue like this. If you don't want people taking welfare benefits, go after the dispenser of the benefits, not the people who simply accept what is offered. If you fear that immigrants will strain the government's schools and hospitals, ask why government is in education and health in the first place. I don't hear Wal-Mart and other private retailers complaining about new customers.

To listen to some immigration opponents, you'd think the worst thing that can possibly happen is for a foreign-born person—especially one without government papers—to take a welfare benefit. Why it matters where a welfare recipient was born, I can't say. After all, independent migrants pay taxes, so why are they less entitled than American citizens? No one should be eligible, but if immigrants are to be singled out, shouldn't they be tax-exempt too? That's not a bad deal.

At any rate, I can think of worse things than "illegal aliens" taking welfare:

1. Native-born Americans' taking welfare. After all, they were born in the "land of the free." Shouldn't they know better?
2. Police-state tactics designed to prevent immigration or to catch people who made it through. Those tactics include storm-trooper raids at workplaces, witch hunts of employers who take the idea of free enterprise seriously and hire whomever they please, and ominous national-identification devices.
3. The routine exploitation of people who are vulnerable to thugs and cheats because of their "illegal" status.

I like what *Freeman* contributor Charles Johnson (blogger at Rad Geek People's Daily, <http://radgeek.com/>) wrote online about this: "As for the welfare state, they ["illegals"] are welcome to milk it dry, as far as I'm concerned. The sooner the damn thing is on the brink of collapse, the better. Besides which, receipt of government benefits is not ipso facto a violation of anyone's rights—it's the funding that's the problem, but illegal immigrants aren't complicit in the existence of taxation—and insofar as they are able to receive some minimal payouts from the State, that may as well count as partial restitution for the daily threats, terror, and violence that the state and federal governments routinely inflict against the property and liberty of all undocumented immigrants."

It's really time we got our priorities straight.

★ ★ ★

The destructive wildfires in California last fall were tragic enough. Must they be turned into a crusade for more government power? Steven Greenhut pulls aside the curtain.

According to the standard political framework, no one person should be against imperial wars and for free-market money. But as Steven Horwitz shows, historically these two positions were a staple of the freedom philosophy.

New York City's mayor wants to charge people to drive into Manhattan. Known as "congestion pricing," any resemblance the idea has to the free market is purely coincidental. Becky Akers explains.

Over the last couple of years the power of prosecutors to ruin innocent people's lives has become too obvious to ignore. Wendy McElroy discusses the infamous Duke "rape" case.

Politics is portrayed as a noble endeavor, but if you scratch the surface you find some people trying to force other people to pay for their pet projects. George Leef applies this principle to so-called historic preservation.

Government wrecked the railroads in Britain, but voluntary efforts are bringing them back. Does this mean there's an alternative to providing services either through force or love of money? James Payne takes up the question.

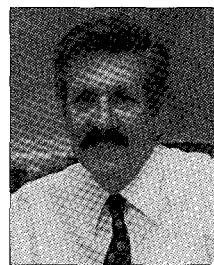
Here's what our columnists' deliberations have yielded: Richard Ebeling considers the nature of interventionism. Donald Boudreaux unveils the real reason Prohibition was repealed. Burton Folsom revisits a time when presidents actually vetoed spending bills they thought were unconstitutional. John Stossel warns against expecting the government to be able to cool down the planet. Walter Williams emphasizes the economic role of property rights. And Robert Murphy, reading the claim that the Federal Reserve isn't really bailing out big mortgage lenders, protests, "It Just Ain't So!"

Our reviewers have the skinny on books about health care, Native Americans, Wal-Mart, and Adam Smith.

—Sheldon Richman
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The Free Market versus the Interventionist State

BY RICHARD M. EBELING



During the first half of 1926, Austrian economist Ludwig von Mises visited the United States on a three-month lecture tour. After his return to his native Austria, he delivered a talk on “Changes in American Economic Policy” at a meeting of the Vienna Industrial Club. He explained:

The United States has become great and rich under the power of an economic system that has set no limits on the free pursuit of the individual, and has thereby made room for the development of the country’s productive power. America’s unprecedented economic prosperity is not the result of the richness of the American land, but rather of the economic policy that understood how best to take advantage of the opportunities that the land offers. American economic policy has always rejected—and still rejects today—any protection for inferiority and uncompetitiveness over efficiency and competitiveness. The success of this policy has been so great that one would believe the Americans would never change it.

But Mises went on to tell his Viennese audience that new voices were being heard in America, voices that claimed it was necessary and desirable to bring private enterprise under government control and for the state to more directly concern itself with the redistribution of wealth. A strong movement had arisen in the United States among academics and intellectuals, in the media and in the political arena, to push the country in this direction.

Indeed, in the America of 1926, Mises observed, “Both political parties, the Republicans as well as the Demo-

crats, are ready to take radical steps in this direction, in order to retain the votes of the electorate.” He concluded that “the results from such a policy will be no different in America than from those ‘achieved’ in Europe.”

In many parts of Europe the trend toward collectivism in the 1930s and 1940s took the extreme forms of communism, fascism, and Nazism. They represented total rejection of a free economy and individual liberty. In America the collectivist trend never went to such extremes, though Franklin D. Roosevelt’s first New

Deal came very close to the fascist model. (See my column “When the Supreme Court Stopped Economic Fascism in America,” *The Freeman*, October 2005.)

Today communism, fascism, and Nazism are all dead in their twentieth-century forms. They failed miserably, bringing nothing but death and destruction. But while many claim—on both the political left and the right—that in their place capitalism has

triumphed, what prevails around the world is far from what classical-liberal economists like Mises considered a free-market economy.

The following eight points, I suggest, define a genuine free-market economy:

1. All means of production are privately owned.
2. The use of these means of production is under the control of private owners who may be individuals or corporate entities.
3. Consumer demand determines how the means of production will be used.
4. Competitive forces of supply and demand determine the prices for consumer goods and the various factors of production, including labor.

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5. The success or failure of individual and corporate enterprises is determined by the profits or losses these enterprises earn, based on their greater or lesser ability to satisfy consumer demand in competition with their rivals in the marketplace.

6. The market is not confined to domestic transactions and includes freedom of trade and the free movement of people internationally.

7. The monetary system is based on a market-determined commodity (for example, gold or silver), and the banking system is private and competitive, neither controlled nor regulated by government.

8. Government is limited in its activities to the protection of life, liberty, and property.

By this definition neither the United States nor any other country in the world is currently a free-market society. Then what type of economic system do we have? Mises also explained this in his 1929 collection of essays, *Critique of Interventionism*:

Nearly all writers on economic policy and nearly all statesmen and party leaders are seeking an ideal system which, in their belief, is neither capitalistic nor socialistic, is based neither on [unrestricted]

private property in the means of production nor on public property. They are searching for a system of private property that is hampered, regulated, and directed through government intervention and other social forces, such as labor unions. We call such an economic policy *interventionism*, the system itself the *hampered market order*.

An Interventionist Economy

Here are seven points that define an interventionist economy:

1. The private ownership of the means of production is restricted or abridged by the political authority.

2. The use of the means of production by private owners is subject to government prohibition or regulation.

3. The users of the means of production are prevented from being guided solely by consumer demand.

4. Government influences or controls the formation

of prices for consumer goods and/or the factors of production, including labor. Government reduces the impact of supply and demand on the success or failure of various enterprises while increasing its own influence and control over market incomes through such artificial means as pricing and production regulations, limits on freedom of entry into markets, direct and indirect subsidies, and redistribution of wealth.

5. Free entry into the domestic market by potential foreign rivals is discouraged or prevented through import prohibitions, tariffs, or quotas. Freedom of movement is prohibited or abridged.

6. The monetary system is regulated by government for the purpose of influencing what is used as money, the value of money, and the rate at which the quantity of money is increased or decreased. All of these are used as tools for affecting employment, output, and growth in the economy.

7. Government's role is not limited to the protection of life, liberty, and property.

It is important to note that the interventionist system represented by these seven points can only be implemented through violent means. Only the threat or the use of force can

make people follow courses of action that differ from the ones that they would have taken if not for government intervention. Thus while intervention is usually discussed under the heading "public policy," there is nothing "public" about them. They are *coercive* policies carried out by politicians and bureaucrats.

Contrast these policies with the free market, or unhampered economy, as we defined it. What is most striking is the voluntary nature of truly market-based social arrangements. Violence or its threat is reduced to a minimum, and the individual is left at liberty to live his own life and improve his circumstances through free association with others.

We need to share with our fellow citizens a clear and persuasive vision of the free society and the free-market economy. If we succeed, the era of the interventionist state can be replaced with a new epoch of human liberty.



The Fed Didn't Bail Out Wall Street? It Just Ain't So!

BY ROBERT P. MURPHY

In his *New York Times* column ("It's Monetary Policy, Not a Morality Play," September 9, 2007), Tyler Cowen decried the clichéd pattern of casting all financial stories into "simple moral narratives." Although many commentators have questioned the Fed's handling of the credit crunch last August and September, Cowen sees no hanky-panky:

Talk of a bailout is overstated. Some institutions have benefited from Fed policy, but the story is not a conspiratorial one: liquid markets are good for many investors, and if the Fed succeeds in keeping markets running, that helps hedge funds, too. . . .

It is true that a more liquid short-term loan market can give a highly leveraged institution a second chance. . . . But keeping loan markets open is not a bailout; it's simply getting part of the economic infrastructure back on line, much as the police clear a road after a traffic accident.

Cowen's recommendation is that journalists and other analysts drop the emotions and write neutrally about the "largely technical subject" of monetary policy, for this is the only way that Fed Chairman Ben S. Bernanke and his colleagues can do their jobs: "[I]f interest-rate cuts are portrayed as a bailout for hedge fund managers, it's harder for the Fed to cut interest rates, if that turns out to be the appropriate policy."

Although I sympathize with Cowen's position, nonetheless he's dead wrong. It's true that the "man on the street" is suspicious of rich financiers, not to mention exotic derivative products he doesn't even understand, but this is one case where knee-jerk hostility is perfectly justified. Not only did the Fed inappropriately

provide relief to rich investors at the expense of everyone else, but its earlier policies also were responsible for the crisis in the first place!

For some reason, many free-market economists have a blind spot when it comes to the Federal Reserve.

Commodity Money

If the government would simply get out of the way, the free market would handle money and banking just fine. Commodity money such as gold and silver arose spontaneously on the market without prodding from kings or sultans, and if used today it would serve as a much better unit of account and store of value than rapidly depreciating pieces of paper with presidential portraits. There is no "science" of monetary policy, no more than there was a science of automobile production in the U.S.S.R. The economic lesson of the twentieth century is that central planning doesn't work. Yes, some planners can be better than others; if we had to have a Fed chair, Paul Volcker was much better than his predecessors. But to advise journalists to keep their mouths shut so that the "experts" can take care of us is asking for the impossible.

According to economists such as Ludwig von Mises and F. A. Hayek, the boom-bust cycles of market economies are caused by government intervention. Artificially low interest rates provide an illusory period of prosperity by short-circuiting the ability of market interest rates to guide investors and entrepreneurs. In a free market, if people save more, interest rates fall and investment expands. This is how the market coordinates con-

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sumption and production decisions over time. But when interest rates drop *not* because of increased real savings, but only because the Fed bumps up the electronic entries showing how much the banking system holds in “reserves,” then the consequent business activity cannot be sustained. Firms will hire more workers and start new projects, but there won't be enough capital goods and resources to accommodate them all. The Fed's easy-money policies can postpone the crisis, but it can't create new drill presses or tractor-trailers. Eventually some of the projects will have to be discontinued, workers will need to be laid off, and equipment and resources will need to be reallocated to more appropriate ends.

This appears to be exactly what happened with the bursting housing bubble and the corresponding crisis in the credit markets. Cowen thinks this is just part of the normal “zigs and zags of daily profit and loss” in a market economy, and he asks, “[W]ill we continue to blame Zeus for lightning strikes?” Yet there is a very strong argument that the policies of former Fed Chairman Alan Greenspan greatly exacerbated, if not caused outright, the unsustainable boom in housing. Trying to jumpstart the economy out of recession from the dot-com crash, Greenspan's Fed cut interest rates from 2001 to 2004. In real terms, the Fed funds rate was pushed to the lowest it had been since the late 1970s. (For a fuller analysis see my article “The Worst Recession in 25 Years?” at <http://tinyurl.com/2pa5tq>.) The most outrageous stories we're hearing—of people with poor credit and no down payment trying to flip a \$500,000 house with an interest-only mortgage—would not have occurred under “tight” monetary policy, let alone in an environment where politics didn't influence interest rates at all.

So far I've painted the Fed as the culprit, but does that make it the villain? After all, maybe it was all an honest mistake to be chalked up to the imperfect though still “largely technical subject” of monetary policy. Alas, I cannot grant Cowen even this. The “conspiracy theorists” have every reason to be suspicious of

the Fed, and of the government-financial complex in general. For example, when President Bush wanted a new secretary of the treasury, he picked Henry Paulson, the CEO of Goldman Sachs, the big investment bank. (He wasn't the first Goldman Sachs officer to hold the post.) Another odd fact is that the Fed stopped publishing the M3 monetary aggregate on March 23, 2006, even though many analysts consider it *the* measure of the money supply. The Fed said the decision was based on cost—what's the marginal cost of collecting M3 data when the Fed already calculates M2?—but it was also at a time when M3 was rising rapidly and the dollar was falling in the currency markets. (The Fed's own charts of M3 can be viewed at <http://tinyurl.com/25ky9p>.)

Trying to jumpstart the economy out of recession from the dot-com crash, Greenspan's Fed cut interest rates from 2001 to 2004.

Mortgage-Backed Securities

For an example directly relevant to the current discussion, Cowen doesn't mention that when the Fed injected “additional liquidity” into the economy in August, it didn't snatch up Treasury securities, as we teach our macro-econ undergrad students. No, it bought \$38 billion of *mortgage-backed securities* (MBS). (The previous record for an open-market-operation purchase of MBS had been \$8.6 billion, set in September

2005. For a more detailed discussion, see John Paul Koning's article, “The Fed Bought What?” at <http://tinyurl.com/2kshgz>. Technically the Fed used repurchase agreements, making the \$38 billion infusion only temporary.)

If the point wasn't to rescue big funds from their bad investments, but only to reassure investors in general that they could access credit, why target MBS?

Tyler Cowen thinks the Fed's recent actions are comparable to when the “police clear a road after a traffic accident.” But as I've shown, a better analogy would have the police firing their guns into the traffic and causing an accident, then ordering poorer drivers off the road so that any bankers injured in the pile-up could be rushed to the hospital.

The layperson's suspicion of the Fed is entirely justified.



Wildfires and State-Worship

BY STEVEN GREENHUT

Whenever wars or other tragedies rage, so too rage those who worship at the altar of government.

In his World War I-era essay, “War Is the Health of the State,” writer Randolph Bourne argued that during peaceful times people concern themselves mostly with their own business, but that during war everything changes. “To most Americans of the classes which consider themselves significant, the war brought a sense of the *sanctity of the State* which, if they had had time to think about it, would have seemed a sudden and surprising alteration in their habits of thought,” he argued (*italics added*).

It’s not just during war that the state is sanctified and government critics are prodded into altering their habits of thought. The media were aflame with government-worship last fall, during and after the disastrous wildfires that forced tens of thousands of southern Californians out of their homes and caused billions of dollars in property damage. Any tragedy helps these folks promote bigger government, and natural disasters, like war, always do the trick.

Southern California is home to about 20 million people crammed into the valleys and basins between the coastal ranges and the Pacific Ocean. The region is interspersed with government-protected hillsides and is hemmed in by national forests. The area can go months without rain, and open areas become tinderboxes. Last year was drier than most, and fires were sparked in Los Angeles, Orange, San Bernardino, and San Diego coun-

ties. Then 100-mph Santa Ana winds, which blow toward the coast from the desert, spread the wildfires rapidly over hundreds of thousands of acres of land. As neighborhoods burned, the air throughout the region was filled with ash. Several people died from smoke and fire.

Such destruction should never be treated lightly, but most of us realized that this disaster would be short-lived. Most homeowners were insured. The air soon cleared (at least back to tolerable smog-laden levels).



Wildfire in Santa Clarita, California, October 2007
Photo by Jeff Turner. Licensed under Creative Commons Attribution 2.0.

The tragedy was tightly contained. Reports of up to 1.2 million residents displaced during the worst of the fire were vast overestimates based on faulty assumptions. Yet despite that reality, the government-worshipers got quickly to work, blaming the private sector for the problems (how dare developers build homes near open space!), por-

traying the government workers who fought the blazes as selfless heroes, and attacking residents of the fire-ravaged communities for selfishly depriving the government of the resources needed to protect them.

Newspapers and TV programs were filled with dramatic photographs of firefighters battling the blazes. There’s nothing wrong with this as part of the broader fire coverage, but such scenes dominated the media. There was a steady drumbeat of propaganda and emotion-laden news footage, which makes it hard to offer

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arguments about free markets and limited government, or even to point out government's firefighting incompetence.

We heard from the governor, legislators, and every other elected official who could get near a TV camera about all the wonderful work the government and the "first responders" were doing to protect us. A typical front-page news story in the *Orange County Register* was titled in large type, "After fire, gratitude," and included these words accompanying the huge photo of firefighters: "On Sunday evening, two weeks after a 50-foot-tall wall of flames raged within feet of some neighborhood homes, more than 200 local residents gathered outside Orange County Fire Authority Station 43 to pay tribute. . . . They opened their wallets, donating \$6,000 worth of cash and [supermarket] gift certificates. . . . They baked chocolate chip cookies. Their cards and posters of thanks hung like fresh laundry outside the station. Firefighters said they don't need gifts to do their job, but they seemed warmed by the outpouring of thanks and the crowds of worshipful children who donned plastic firefighter hats."

Once the public responds in this manner, the distorted analyses and troubling policy prescriptions are close behind.

It didn't take long for the "progressive" website Calitics to figure why so much of southern California was burning. Its analysis was soon championed across the state. Blogger "Robert in Monterey" explained

how anti-tax sentiment in San Diego County left firefighters without adequate resources to respond to this week's inferno. Unsurprisingly, this has happened elsewhere. As firefighters battle to save Silverado Canyon and prevent the Santiago Fire from reaching Riverside County homes, we are now learning that Orange County firefighters faced similar crippling shortages of equipment and personnel. . . . Specifically, Orange County Republicans cam-

paigned hard against Measure D, a 2005 ballot proposal that would have diverted \$80 million in surplus public safety funds from Proposition 172 to help properly staff Orange County fire departments. The failure of Measure D leads directly to the OCFA's [Orange County Fire Authority's] inability to quickly contain the Santiago Fire when it broke out Sunday evening.

Fire officials didn't throw water on such allegations, dubious as they are. Orange County Fire Chief Chip Prather complained to the *Los Angeles Times*: "We're out there with a handful of crews trying to stop this big fire, and all we could do was just put out spot fires. It would have been great to have the cavalry come in, but there were several fires burning, and it was taking time for the resources to get here."

Push for Higher Taxes

The stage had been set for the obvious: a push for higher taxes. "Unfortunately, it is as certain as night follows day that prior to thoroughly evaluating any actual need, there will be politicians, bureaucrats and leaders of public safety employee unions who will be advocating new taxes 'to keep us safe,'" wrote Jon Coupal, president of the Howard Jarvis Taxpayers Association, in an

October 31 column in the *Register*. "Indeed, an opinion piece in the San Diego newspaper has already blamed Proposition 13—'which slashed property taxes'—for the inability to organize a more regionalized response to fire dangers. Never mind that per capita property-tax collections in San Diego, even adjusted for inflation, are far higher than they were in 1978, just prior to Prop. 13."

The previous week *Los Angeles Times* columnist George Skelton called for higher taxes: "But while the combined state-local tax hit has remained relatively constant in California, hardly anyone would argue that the quality of life has. It noticeably has deteriorated:

We heard from the governor, legislators, and every other elected official who could get near a TV camera about all the wonderful work the government and the "first responders" were doing to protect us.

clogged traffic, overwhelmed emergency rooms, unkempt parks, smog-befouled San Joaquin Valley. And we're losing to the wildfires. . . . Commentators keep talking about a 'perfect storm': Santa Ana winds, hot temperatures, drought. But there's also another kind of perfect storm: poor land-use planning, population sprawl, refusal to raise taxes for fire suppression."

Skelton would never consider the possibility that the state keeps misusing its resources, thus spending a far smaller proportion than it used to spend on infrastructure and quality-of-life issues and far more on social programs and pay and benefits for government workers. Skelton's answer is to "impose a surtax—call it a fee—on each new job that's created, paid by the employer." But even more troubling than that idea is his suggestion—quite common following the fires—that government needs to engage in even more rigorous land-use planning to keep people from living so close to the wild lands.

Environmentalists and Hollywood actors, many of whom no doubt already have their fancy homes tucked into the hillsides, made their usual outrageous pronouncements. "People are selfish," said comedian George Carlin to *People* magazine. "These people with the fires and the floods and everything, they overbuild and they put nature to the test, and they get what's coming to them, that's what I say." Actress Jamie Lee Curtis added, "Global warming, combined with people building houses in places they shouldn't, et cetera, et cetera, et cetera. It just compounds to become, as they call it, a perfect storm experience here. It's not by accident. This isn't an act of God. This is an act of man."

Limits on Growth

News stories were filled with suggestions for new limits on growth in outlying areas, despite the state's continually escalating population, and new government mandates for building houses with fire-resistant materials. Some planners called for some

burned-out areas to be abandoned, just like low-lying New Orleans flood zones. If the experience from the last fire is any guide, regulators will make it virtually impossible, or at least economically infeasible, for many homeowners to rebuild on their existing lots. And while the private insurance industry has a better record at helping victims rebuild their lives than the government does, state officials publicly warned insurance companies that they better not take advantage of fire victims. The state offered inspectors to help fire victims in case insurers commit fraud. The message was clear on all fronts: The private sector is greedy, but the government will be there to help you.

Here is some necessary perspective:

While no one minds thanking firefighters for a job well done, we all should take issue with the hero-worship. Firefighters in southern California are highly paid professionals, who average \$175,000 a year in total salary and benefit packages in Orange County. Firefighters in most southern California jurisdictions can retire after 30 years with 90 percent of their final year's pay guaranteed by taxpayers. They enjoy some of the most generous health-care benefits imaginable. So they are well paid for their work. That work has certain dangers, but they are compensated for enduring them.

Most of the time firefighters have little to do. According to a local fire-union official, about 95 percent of their calls in Orange County are nonfire-related—mostly paramedic calls, as the fire unions have successfully used the political system to put most private paramedic services out of business. Firefighters generally work three-day weeks and are paid while sleeping. Taxpayers provide these generous benefits and allow firefighters to spend their days in relative leisure so they are available when fires do occur. They certainly are not coerced into taking on this sometimes dangerous work, given that thousands of applicants line up for every firefighting job. The unions have driven away

If the experience from the last fire is any guide, regulators will make it virtually impossible, or at least economically infeasible, for many homeowners to rebuild on their existing lots.

volunteer firefighters, by the way, to maintain this cartel. We don't treat our doctors or roofers as heroes, but then again they don't have unions that pull out the hero card every time they want more money.

Public safety budgets are not shortchanged by greedy anti-tax activists. The left-statist critics who blamed Orange and San Diego County residents for "shortchanging" government apparently didn't do much research. Those "conservative" counties spend about the same portion of their budgets on firefighting as "liberal" Los Angeles County. The example of Orange County anti-tax sentiment was Measure D, a countywide initiative that failed overwhelmingly in 2005. But that measure would not have increased taxes; it merely was about divvying an existing stream of taxes between law enforcement and the fire unions. Conservatives were on both sides of the issue.

The anti-D forces argued accurately in 2005: "The Fire Authority has a substantial budget surplus. If their fire stations are truly understaffed, then why did the Fire Authority recently spend \$50 million to build a new luxury Administration Building that even their own ballot signer, Joe Kerr, called a 'multimillion-dollar Taj Mahal'? The Fire Authority needs more financial accountability, NOT more of our tax dollars!"

The problem is not a lack of funds, but a firefighting agency that spends its money recklessly—on grandiose building projects and excessive salaries and benefits for its employees. As is typical with government agencies, these officials spend their money on things the government workers prefer, then shortchange the public by underfunding those things that would most benefit it. At the time, the fire authority was not calling mainly for more capital expenditures had Measure D passed, but for putting a fourth firefighter on every engine.

The police and firefighting agencies were battling over funds from Proposition 172, a half-cent statewide

Insurance companies, rather than government agencies, could require the use of fire-resistant materials or reward those owners who use them, and insurance rates would take full risk factors into account.

"public-safety" sales tax placed on the 1993 ballot by legislators. "Ten days before Election Day, tracking polls showed the measure lagging," the Jarvis group's Coupal wrote. "Then several wildfires broke out and made fighting fires a topical issue. The tax promoters seized the opportunity and ran a last-minute blitz on television featuring soaring flames and sweating firefighters. . . . Politicians who will propose new taxes in the aftermath of the recent disaster are hoping voters will have forgotten that *we are already paying higher taxes for fire protection*" (emphasis added). But to government-worshippers, the state never has enough.

It's foolish to accept the need for more government involvement when government failed in its firefighting efforts. According to the *Los Angeles Times*, "A special panel appointed by [Gov. Arnold] Schwarzenegger recommended in 2004 that California buy 150 more fire trucks for emergencies. So far only 19 have been ordered. They are scheduled to arrive in time for next year's fire season." Government officials say they did the best they could, but a "perfect storm" hindered their efforts. However, government-run systems are no better at providing firefighting service than they are at providing anything else. The incentives are wrong. California governments are

no more efficient than Soviet-era governments at getting the right resources to the right places.

More Private Approaches

We need more private approaches, not more government. In a privately run system, where private property is at stake, insurers and their private fire companies would have incentives to patrol open spaces during the high-risk season, adopt other preventive measures, and have sufficient modern equipment—rather than waiting for the fires to rage, then insisting that they heroically did everything they could do, while complaining about too few resources. Insurance companies, rather than government agencies, could require the use of

fire-resistant materials or reward those owners who use them, and insurance rates would take full risk factors into account. (They do this to an extent, but insurers are highly regulated and the government mitigates or absorbs much risk.)

California's massive government ownership of land is largely to blame. In his article "Land Socialism: Playing With Fire," Ludwig von Mises Institute President Lew Rockwell captured the essence of what went wrong in California: "The problem is the theory of environmentalism. Under it, ownership is the enemy. Nature is an end in itself. So it must be owned publicly, that is, by the state. The state, in its management of this land, must not do anything to it. There must not be controlled burning, brush clearing, clear cutting, or even tourism." I've read stories of homeowners who were threatened with lawsuits by the Forest Service for cutting down brush on nearby public lands to save their homes. I know homeowners who were kept away from their own private property by the government and treated rudely when they tried to find out the status of their homestead.

Command and Control

This is government at work: command and control. And Rockwell noted that government bureaucracies had no incentive to innovate or "plan for and assess risks." The private approach, he wrote, is far preferable: "Are we under the impression that private markets can't handle risk management? Private markets specialize in protection of property, particularly against natural risk. If the land were privately owned, it would be protected against burning through better management. If it had to be burned, the burning would be controlled. Unexpected events like droughts and winds would be calculated into management decisions."

Instead, Californians are told that their homes burnt to the ground because they selfishly chose to live in high-risk areas; they are told that the fires raged because they are too greedy to pay higher taxes; they are told that there's nothing they can do but allow government to have more power to tax and control them. And, thanks to the media's coverage of the "heroic" actions of government, most Californians don't even know that there's any other possible explanation or alternative. 

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Free-Market Money: A Key to Peace

BY STEVEN HORWITZ

When I teach money and banking, I begin the section on the history of the American monetary system by asking my students what the following dates in U.S. history have in common: 1812–1816, 1863, 1913, and 1971. The obvious answer is, “times of war or close to it.” (If you count the Great Depression as a metaphorical war in the eyes of politicians, you could add 1934–35 to the list.)

The answer I am looking for, however, is, “times of increased federal government involvement in the monetary system.” That both answers are correct is no coincidence. For hundreds of years governments have intervened in monetary institutions in order to use them to raise revenue through the manipulation of money and credit, and most often that revenue has been used to make war.

War finance has long been the overt and covert rationale for an expansion of government’s role in the banking system. For classical liberals, exploring this historical relationship sheds light on the sources of both government control over money and the duplicity with which the state often heads to war. The connection illustrates that government intervention in money has no justification in the failures of free-market monetary systems, but rather grew out of the need for revenue. However, it also illustrates the ways in which government can mislead with respect to war by subverting the democratic process and using less-than-transparent means to finance wars, especially unpopular ones.

That classical liberals believe both that government should get out of the money-regulation business and stick to defending the territory of the United States from attack, rather than intervening in the domestic affairs of other nations, often strikes proponents of the “conventional wisdom” as odd. This sort of reaction

has greeted Ron Paul’s presidential candidacy, which has argued for an immediate withdrawal from Iraq and for the gold standard. Most conservatives, of course, deride the former position, while the left (and some on the right) do the same to the latter. What few if any seem to realize is that these two positions have a deep and important historical connection: If you want to make it harder for the U.S. government to act like an imperial power, you need to find ways to reduce the resources available for it to do so. Preventing the state from creating money would eliminate its ability to manipulate

the monetary system to raise funds surreptitiously for foreign adventurism.

Fighting wars requires resources. Governments have only four ways to raise revenue: sell off assets, borrow, tax, or inflate/manipulate the currency. If we assume that states interested in making war are also ones interested in accruing power, selling off assets is unlikely, at least as anything but a last resort.



National Archives

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Both borrowing and taxing have their limits. The most common strategy for financing wars is to sell war bonds. If governments go in this direction, they better have buyers, which assumes that the populace is in general agreement with the conduct of that war. War bonds are a hard sell for unpopular wars. For example, World War II bonds sold well as the public was convinced it was proper to respond to the direct attack by the Japanese and to attempt to stop the Nazis. However, you will look in vain for any Vietnam War bonds, nor have any Iraq War bonds been available since the 2003 invasion. When governments wish to conduct unpopular and often unjustifiable wars, engaging in borrowing tied directly to that purpose is unlikely to succeed.

Raising taxes to fight a war also requires at least some public agreement with the policy because tax-raising politicians may well be voted out if the war is unpopular. For politicians the downside of raising taxes (like the downside of using conscription to obtain soldiers rather than paying them market wages) is that it is an obvious and painful grab for resources by the state. Taxes make the costs of war very visible and spread them across the whole population. (Conscription is very visible, but more concentrated on the draftees.) From the standpoint of political actors, it would be preferable to raise the necessary resources in a way that is much less obvious and therefore has less potential for political conflict. Whenever politicians can disguise and/or delay the true costs of their programs, they will do so. This is where the monetary system enters the picture.

Governments that can either create money directly or use regulation to force banks to provide the resources will be able to conduct war more often and with less political resistance than those that cannot.

From 1791 to 1811, the federal government had partial ownership of the First Bank of the United States, which did not charter or regulate banks, but instead produced a limited amount of currency and served as the government's bank. With the completion of the War of 1812, it became convenient for the federal

government to have such a bank in operation again, and so the Second Bank of the United States was created in 1816 (lasting until 1836).

In 1863 the federal (Union) government for the first time offered charters for individual banks. With charters came regulations, one of which was the requirement that bank-issued currency be backed with U.S. government bonds. Whenever a federally chartered bank wanted to give its customers paper currency, it had to purchase such bonds, whose face value slightly exceeded the value of the currency and then present them to the Comptroller of the Currency in Washington, who then printed the bank's notes. Aside from the effect on war finance discussed below, this cumbersome process was the root of the periodic currency panics that struck the post-Civil War banking system and ultimately led to the Federal Reserve System as the "solution" in 1913.

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Guaranteed Bond Market

The stated rationale for the bond-collateral requirement was that it provided safety in case the bank failed and could not redeem its notes in gold. However, Congress also knew that the requirement would, in theory, create a guaranteed market for U.S. government bonds, which in turn would enable the Union government to have revenue to pay for the Civil War. Interestingly, when the federal government first offered the charters, almost no banks signed up; they kept their state charters because the federal charters offered no advantages and some minor disadvantages. Not content to lose that way of financing the war, Congress quickly passed a 10 percent tax on the banknotes of state-chartered banks. This now made federal charters notably more advantageous, leading a significant number of banks to apply. By the end of the 1860s federally chartered banks were proliferating and the large market for the bonds had come to pass. Between the original bond-collateral requirements and punitive tax on the state-chartered banks, the federal government used its power over the monetary system to ensure a market for bonds to pay for the Civil War.

Although the Great Depression was itself not a war, it certainly took on many of the characteristics of one, as the Roosevelt administration attempted to pass legislation and programs that were of questionable constitutionality and popularity. Like many wartime activities, it is plausible to argue that the New Deal programs benefited business constituencies more than the public at large. (Halliburton's role in the Iraq War provides a contemporary example of this sort of damaging corporate capitalism.) The administration's outlawing of private gold holdings in 1934 and the Banking Act of 1935, which created a variety of new federal interventions—the most notable giving the Federal Reserve new powers to create money through bond purchases—were both examples of using the monetary system to provide resources for a growing state. These powers were certainly useful when the government took the country into World War II a few years later.

Vietnam Inflation

The Vietnam era provides an example of a direct connection between inflation of the money supply and war finance. The Johnson administration made a conscious decision to finance the Vietnam War through inflation rather than higher taxes. The increase in money was accomplished by buying up government bonds from financial institutions; as payment, the government simply credited the institutions' accounts. This saved interest payments on those bonds and therefore also allowed the government to issue additional Treasury securities at the same total interest cost they had before the new money was created. The bottom line was that the Fed created additional money and allowed Congress to run more debt at no greater cost in the process.

At the time Federal Reserve Notes held by foreign central banks were still redeemable in gold at the Fed. As a result of the inflation (depreciating dollar) of the late 1960s, the Fed saw a massive flow back of Federal Reserve Notes from foreign governments, which began to reduce U.S. gold holdings. This drain of gold reserves

led President Nixon to close the "gold window" in 1971, breaking the last remaining link between the dollar and gold. With excess supplies of money no longer generating any direct negative economic consequences for the Fed, the even-greater inflation and macroeconomic disorder that characterized the rest of the 1970s and '80s were no surprise.

Thus the need to finance the Vietnam War led to increased government control over money, which led to macroeconomic disorder (much as we saw in the late nineteenth-century banking panics), which in turn led to calls for more government intervention. Aside from the direct problems of financing the warfare state, increased control of money by the state often sets off what Ludwig von Mises called the "interventionist dynamic," in which one state intervention has negative unintended consequences that create the perceived

need for more intervention. The business cycle is one example of this process.

One can tell similar histories about the creation of central banks and other forms of government monetary intervention in other countries across the globe. The need to fund war and empire has been behind the creation of many a central bank. It's easier to pay for bombs and bullets if you have the equivalent of a

printing press at your fingertips.

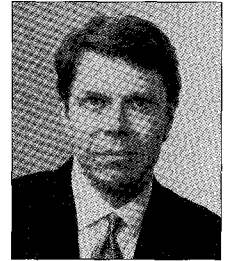
Because inflation's costs are normally dispersed, subtle, and longer term, politicians find it a politically more palatable way to raise revenues, especially for unpopular causes. This point is even more important because politicians play up the very short-term benefits of inflation as if they were a panacea for a stalled economy. Persuading the public to accept those ephemeral and small short-term gains without an understanding of the long-term costs is part of the general deception often used to promote empire-building wars.

For those who object to an American empire, protesting the occupation of Iraq may seem the best course. But institutional changes that would deprive the state of resources—specifically, privatization of the monetary system—would be much more effective. 

The Vietnam era provides an example of a direct connection between inflation of the money supply and war finance.

Alcohol, Prohibition, and the Revenuers

BY DONALD J. BOUDREAUX



The standard account of America's experience with alcohol Prohibition centers on ideology. This account states that citizens were so infused with Progressive hubris that they set forth in 1919 on a futile quest to mandate morality by banning the manufacture and sale of liquor. But when they recognized that Prohibition was failing, Americans abandoned the "noble experiment."

The standard account contains grains of truth. Undoubtedly, many Americans during the Progressive era possessed a fervent faith in democratic government and a burning desire to "uplift" the lot of humankind. The temperance movement meshed with the Progressive spirit: use government to engineer better social outcomes—in this case, enforced sobriety. And there is no doubt that Prohibition not only failed to stop Americans from drinking, but also fueled organized crime.

But this account is simplistic. It overlooks the realities and complexities of political behavior, as well as important facts. The ideology of temperance played a role in staging Prohibition, but the raw logic of politics was the true director of this drama.

The central character was federal taxation. Specifically, the income tax proved a viable alternative to liquor taxation for raising revenue, making Prohibition politically possible. Despite decades-long agitation for Prohibition, Congress could not afford to sacrifice liquor-tax revenues until it discovered just how lucrative the income tax could be. That tax's revenue-raising prowess reduced the cost to Congress of voting for Prohibition. Fourteen years later, though, matters changed abruptly when the onset of the Great Depression severely slashed income-tax revenues.

Before the modern personal income tax in 1913, Uncle Sam relied mainly on customs duties and liquor taxation. From 1870 through 1912 receipts from these two taxes alone accounted for more than two-thirds of federal revenues (and in many years accounted for more than 75 percent). Liquor taxes trailed only customs duties as the largest single source of revenue during the half-century preceding the modern income tax, with liquor taxes accounting for about a third of federal revenues.

Then came the income tax (implemented first in 1914) and, on its heels, America's entry into World War I. During the war federal revenues received through

income taxation for the first time exceeded those from any other single source. Income taxes went from about 16 percent of the federal government's revenues in 1916 to double that proportion in 1917. By 1918 the income tax supplied nearly two-thirds of those revenues.

Income-tax revenues accelerated most dramatically in 1918, but the income tax had already demonstrated its prodigious revenue potential the year before. Receipts in 1919 were almost triple those of 1916. More important, Congress passed in October 1917—two months before it successfully proposed the Prohibition-enabling Eighteenth Amendment—the legislation that would yield 1918's enormous increase in income-tax receipts: the War Revenue Act of 1917. It raised more than \$2.3 billion in 1918.

By fall of 1917 Congress saw the income tax as its chief source of revenue, reducing the cost of voting for Prohibition in December 1917. The lost liquor-tax revenues (beginning January 16, 1920) were trivial

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The income tax proved a viable alternative to liquor taxation for raising revenue, making Prohibition politically possible.

compared with the huge and rapidly growing revenues derived from the individual and corporate income taxes. The temperance movement's decades-long quest was seemingly brought to a triumphant conclusion.

Yet Prohibition's cost to Congress increased not long afterward, so the Eighteenth Amendment was repealed in 1933.

This conventional explanation for repeal—that Prohibition was widely defied—can't explain why Congress ended Prohibition after such a short trial run, particularly in light of the dearth of organized support for repeal during the 1920s. It's far more likely that Congress proposed the Twenty-First Amendment (to repeal the Eighteenth) in February 1933 not so much because it was a faithful agent of voters who recognized the futility of Prohibition, but because the politicians desperately wanted more revenue.

The Great Depression severely reduced individual and corporate incomes, and income-tax revenues correspondingly plunged beginning in 1931. By 1932 federal income-tax receipts fell by well over a third from their level in 1931 and to almost half their 1930 level. In 1933 fiscal matters got even worse, with income-tax receipts that year less than 40 percent of their 1930 level. The revenues in 1933 were the lowest since 1917. The income-tax stream that had swelled so promisingly during Woodrow Wilson's second presidential term was running dry.

A Search for Taxes

So Congress searched for another taxable activity. This search led the framers of the 1932 Democratic party platform to call for repeal of the Eighteenth Amendment in order "to provide therefrom a proper and needed revenue." Jouett Shouse, president of the Association Against the Prohibition Amendment and an influential figure in the Democratic Party, predicted that repeal of the Eighteenth Amendment would generate at least \$1 billion in additional revenue. A prominent House leader in the fight for the Twenty-First Amendment admitted in 1934 that "if we [anti-Prohibitionists] had not had the opportunity of using that argument, that repeal meant needed revenue for our Government, we would not have had repeal for at least ten years."

And sure enough, Prohibition's repeal did indeed

generate higher liquor-tax revenues. As a percentage of federal government revenues, liquor taxes jumped from 2 percent in 1933 to 9 percent in 1934 to 13 percent in 1936. Repeal did not fully compensate for lost income-tax revenues, nevertheless it promised a sizeable stream of additional revenue.

Congress had strong allies in this revenue-seeking cause. Among the interest groups that supported the Twenty-First Amendment was organized labor allied with wealthy industrialists (such as Pierre and Irénée du Pont). Labor leaders and the very wealthy hoped that higher liquor taxes would restrain or even reverse the expansion of income taxation.

The loss of revenues from the income tax made it less costly for Congress to satisfy these interest groups than just a few years earlier. Beginning in 1934 effective income-tax rates were cut for all taxpaying groups with net incomes of \$20,000 (\$300,000 in 2007 dollars) or less. Although the typical income earner paid no taxes on his income during the 1930s, a significant number of unionized workers took home incomes high enough to be liable for the tax. For example, the median unionized worker in the building trades earned more than \$2,000 a year all during the 1930s (nearly \$31,600 in 2007 dollars). Workers with annual incomes between \$2,000 and \$3,000 and a single exemption saw their effective income-tax rate fall from 2 percent in 1933 to 1.6 percent for the years 1934 through 1939.

On the whole, then, income-tax rates for persons owing federal income taxes fell for all but the very highest earners. So while the du Ponts and their peers failed to win lower income-tax rates for themselves as a consequence of Prohibition's repeal, the great majority of Americans who paid federal income taxes (including large numbers of politically potent unionized workers) had their income-tax burdens eased.

It is no coincidence that Congress first acted to repeal the Eighteenth Amendment only *after* the severe revenue-reduction shock administered by the Great Depression. Openly collecting taxes on freely traded liquor without repealing the Eighteenth Amendment and the Volstead Act would have too blatantly flouted the Constitution. So they were repealed.

As the cliché goes, money is the mother's milk of politics.



Congestion Pricing: The Road to the Surveillance State

BY BECKY AKERS

To combat the rush-hour traffic threatening Western civilization, American mayors are flocking to “congestion pricing.” They’re not alone: rulers worldwide love this scheme because it combines yet another automotive tax with surveillance cameras at every intersection.

The theory fueling congestion pricing is the one spanning our automotive lives: driving is a “privilege” government dispenses. Driving at rush hour is an even bigger privilege. So far, the state has granted this privilege for free (the dozens of highway, gas, sales, license, and car taxes we pay don’t count). But the gravy train is ending. There’s no reason we should expect to drive cars we’ve bought on roads we’ve paid for when everyone else does. That’s not how the market works, say politicians who’ve ridiculed, regulated, and mooched off the market their entire careers. Willfully confusing supply and demand with control and command, they insist that mere citizens who want to use the roads at rush hour will have to pay. A lot. Hopefully, that will force commuters onto mass transit, clearing the streets for the limousines of Leviathan’s anointed.

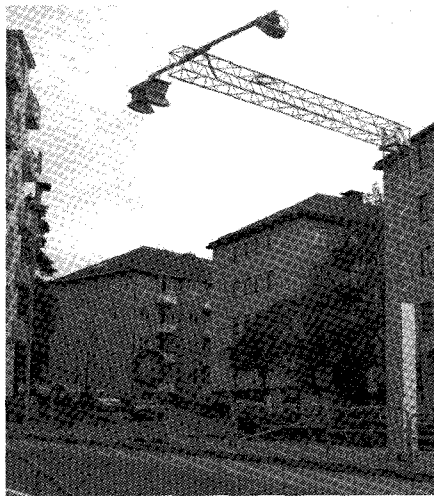
Congestion pricing does thin traffic a bit, anywhere from 13 or 17 percent (in Singapore and London, though the anti-car Transportation Alternatives claims the latter’s traffic dropped by a whopping third) to 20 percent (Stockholm). Nor is traffic the only thing congestion pricing reduces: London’s retailers report trade has also plunged 10–15 percent, shuttering 750 busi-

nesses in one year. It’s likely that neither reduction matters to the governments pushing congestion pricing. The state’s real interest lies in the cameras and cash.

London’s socialist mayor, Ken Livingstone, imposed congestion pricing on his hapless subjects in 2003. Drivers who entered “the zone between 7 a.m. and 6:30 p.m. [notice the definition of “rush hour”], except on weekends and holidays” paid about \$16 per day then; they’re billed when computers match their addresses to the “multiple images of [their] license plates” captured

by “700 video cameras,” as the *New York Times* explained in 2005. The cameras have since multiplied because congestion pricing, like all government programs, continually expands. Meanwhile, “there is nowhere in London you can avoid getting photographed and recorded,” according to Yosef Sheffi. As director of the Center for Transportation and Logistics at the Massachusetts Institute of Technology, Sheffi advocates congestion pricing for Boston. He dismisses those who object to staring in surveillance films as hopelessly outdated: “There is also fear of

privacy issues. According to the CEO of Sun Microsystems, ‘You have no privacy in today’s age. Get over it.’” Accurate if tragic advice for Londoners, whose city has a camera watching every 55 people, the most per capita in the world.



Stockholm’s first toll station for congestion pricing.

Photo by Tage Olsson. Licensed under Creative Commons Attribution ShareAlike 2.0.

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New York City's mayor, Michael Bloomberg, longingly eyes those cameras while patronizing anyone who "think[s] this is a civil liberties issue [as] terribly unrealistic." But cameras film everything in their purview, not just license plates. They record drivers trying to beat the light, expired inspection tags—even bumper stickers and pedestrians protesting the latest government outrage.

Safer Streets?

You might think that because they also record crime, they ensure safer streets. You would be wrong. Cameras have nothing to do with safety and everything to do with surveillance. Even New York City's Council noted the disconnect between cameras and crime when considering a "local law . . . requiring that commercial shopping establishments . . . install, maintain and operate surveillance cameras in order to deter crime." The council cited the British experience with omnipresent cameras: the "10,524 CCTV [closed-circuit television] cameras in 32 London boroughs" were famously used "after the London subway bombings on July 7, 2005"—not before. "CCTV systems [may] actually have a minimal effect on preventing crime," the council added. "A British report published in 2002 found that in 14 British cities that utilized a CCTV system, the cameras had no effect on six of the cities, and that while six of these cities reported a decrease in crime, two reported an increase."

American security guru Bruce Schneier inveighs frequently against "the inefficacy of security cameras" in fighting crime. That inefficacy has become old news in Britain, yet the government refuses to cleanse the streets of its omnipresent cameras. As Surrey Health Borough councilor Ian Bell wrote in Scotland's *Sunday Herald*, "Crime's ultimate victim—that would be liberty of the person—is twice abused thanks to CCTV. . . . To be law-abiding is no longer an excuse [to be free of surveillance]." Worse, videotape is notoriously easy

to manipulate, especially when the government trying to convict a man produces and stores the footage that allegedly proves his guilt. All in all, perhaps it's Bloomberg, rather than those fearing his surveillance, who is "terribly unrealistic."

New York's mayor ignores not only the police state that cameras produce but also the congestion government causes. For starters, let's remember who monopolizes both the limited supply and the design of roadways with their intersections, traffic lights, and speed limits. Then add zoning laws. Segregating "business districts" from the employees and customers who rely on them, locating shops and factories at several and often dozens of miles from residential neighborhoods, is a sure route to congestion. The zoning czars in many suburbs of

Manhattan indirectly force their residents to work and shop in the city. (Zoning curses Manhattan, too, but the island's compactness helps mitigate the misery. Many New Yorkers walk or bike to work, and they can always find bookstores, groceries, and restaurants within a few blocks of home.)

Tolls rob drivers at most entrances to the island of Manhattan, backing up traffic for miles each day at morning and evening rush hours. Those fidgeting in line aren't paying to construct more lanes and diminish their delay, either; they are instead subsidizing the city's busses and subways, according to the American Automobile Association's (AAA) New York office: "One-third of the more than one billion dollars collected in tolls on MTA Bridges and Tunnels facilities is shifted to mass transit."

The tolls' amounts differ from entrance to entrance, depending on the politics of the years they were instituted. Here's the unintended consequence, as explained by Samuel I. Schwartz, a "traffic and transportation engineer" who has tried to impose congestion pricing on his fellow citizens since 1980: "[A] trucker going from Brooklyn to New Jersey faces about \$40 in tolls if he sticks with the expressways and crosses the Verrazano Bridge. But, if he chooses to creep down" local streets in both Brooklyn and Manhattan, thereby adding to

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their traffic, “he faces no toll at the outbound Holland Tunnel.”

He’ll pay in lost time, however: blocking those local streets are the city’s garbage trucks. Skyscrapers with apartments by the score generate mountains of trash, and the city monopolizes its collection. Several times each week, a couple of workers slowly pitch sack after sack into the hopper while cars pile up behind them. These civil servants are never ticketed, however leisurely their pace or enormous the logjams they cause. Ditto for fire engines and other emergency vehicles on practice runs. Barreling out of their stations, they snarl traffic while their screaming sirens deafen passers-by. Thank God there aren’t nearly as many fires as there are engines shrieking down the avenues or the whole place would have burnt to the ground by now.

The city regularly closes roads for everything from 9/11 commemorations to United Nations ceremonies to “community fairs.” Taking even a single side street out of play on this densely populated island gridlocks whole neighborhoods. But the city doesn’t care because it’s raking in the revenue and publicity.

Then there are the permits for free parking the city dispenses to its employees. Not surprisingly, the permits entice their holders to “drive to work in the Manhattan central business district at just about twice the rate (27% versus 14%) of private-sector employees,” according to the Manhattan Institute.

Congestion pricing tackles none of these problems. Anyone somewhat serious about curing them would have to confront powerful unions and upset profitable apple carts—difficult, mundane, and even dangerous work that would ease much of New York’s congestion. Anyone completely serious would undertake the infinitely more difficult and dangerous work of privatizing all things automotive, including roads.

No wonder politicians prefer the drama and headlines of congestion pricing, despite its negligible effect on traffic. That’s right: congestion pricing will destroy the remnants of freedom and privacy, fundamentally

alter commuting, hinder commerce, waste enormous sums of money on its cameras while transferring even more money from drivers to the state—all for single-digit reductions in Manhattan’s traffic. The city’s “administration expects congestion pricing to decrease vehicles entering Manhattan by 6% and increase speeds within the charging zone by 7%. In other words, the traffic improvement in Manhattan would be modest.” This from the Manhattan Institute, a conservative think-tank and one of congestion pricing’s biggest cheerleaders.

So why bother? Because this system benefits government generally and politicians personally. It’s no accident that a mayor hinting at a presidential campaign

prominently featured congestion pricing in his ballyhooed “PlaNYC,” the blueprint he unveiled last April. Altogether, PlaNYC contains a staggering 127 “initiatives.” These include pushing commuters onto the subways via an \$8 tax on each car entering certain parts of Manhattan. Both the price and the area covered by this double-dipping will rise faster than baking bagels; they already have, even in the planning stages. Congestion pricing and PlaNYC’s other hokum generated lots of publicity, as the *New York Sun* observed, “It could also help

the mayor appear to be a leader on a global issue that could be a key topic in the 2008 presidential race, which Mr. Bloomberg could enter as an independent candidate.”

Bloomberg peddles congestion pricing as zealously as snake-oil. He even taught bureaucrats from other cities—Albuquerque, Austin, Chicago, Houston, Indianapolis, Los Angeles, New Orleans, Philadelphia, Salt Lake City, San Francisco, and Trenton—how to foist it on their denizens at a conference last May.

Crystal-Ball Predictions

Bloomberg excuses his mischief because of a study predicting the state of the city over the next 23 years. Supposedly, a million new residents will enrich New York—though that’s a bugaboo rather than a

Anyone completely serious would undertake the infinitely more difficult and dangerous work of privatizing all things automotive, including roads.

blessing to the Malthusian mayor. Either way, crystal balls are notoriously wacky and wrong. In the 1960s, pundits predicted we'd be living underground and on the ocean's floor by now. And then there was the dire—but false—alarm in the late '90s about an event only a few years off: Y2K. Yet PlaNYC dictates “sweeping” changes in New Yorkers' lives because of predictions for a quarter-century in the future.

Our taxes bought this forecast from McKinsey & Co., a firm that employs a bevy of very expensive “problem solvers” but not a single seer. No doubt, its “study”—the term court charlatans use for a guess gussied-up in jargon—is as wrong as the advice it gave AT&T in 1983, when its “problem solvers” allegedly pooh-poohed cell-phones as a niche market.

No matter: congestion pricers treat McKinsey's guestimate as fact. “[F]rankly,” says Hope Cohen, a former bureaucrat who now works for the Manhattan Institute, “our transportation system is strained almost to the breaking point in many places and clearly will not be able to handle the additional million people anticipated to be here in the next generation.” Cohen brings a bureaucrat's point of view to this “problem”: “we,” she says, meaning herself and her friends in government rather than the drivers and

taxpayers on whom they will experiment, “have to start figuring out how to make our transportation system work better and be more efficient. That includes discouraging unnecessary and inefficient car trips—especially, but not only, in Manhattan.”

Against all reason and experience, the Manhattan Institute and other boosters of congestion pricing insist that it is a “market-based” solution to traffic. But what entrepreneur can get away with charging customers multiple times for the same service?

The free market is a poor man's best friend, supplying his needs and even some of his wants at prices he can afford, however small his budget. Then government invades. It piles on taxes, tariffs, licenses, fees, and presto: the poor man once again barely subsists. This alone brands congestion pricing as government-based, not

market-based, because it preys on the poor, hitting them hardest. U.S. Rep. Anthony Weiner (D-NY) told the *New York Sun*, “It's going to be a rather substantial tax on people already struggling to make it.” And Richard Brodsky, a Democrat in New York's State Assembly, summarized the social engineering inherent in congestion pricing: “Access to things that are traditional New York City are being handed out on a class basis.” Accordingly, the city's rulers are scrambling to ensure that congestion pricing robs only the serfs, not them: the *New York Post* reported, “A debate has broken out within the City Council over whether legislators—who'll soon have to weigh in on congestion pricing—should be reimbursed for tolls when they drive to City Hall.”

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The Elderly

And what of elderly folks? The *Christian Science Monitor* quoted “Queens Village resident Gabriella Krill [who] thought the proposed tax would be unfair on seniors who already pay heavy taxes to live in [New York C]ity. ‘Subways are hard—to go up and down stairs. Buses are hard to get out of,’ she said.” Thanks to Social Security, many folks subsist on fixed pittances, which won't allow them to pay

another \$8—to start—when they must visit their doctors in Manhattan.

Congestion pricers misrepresent the market when they blame it for the higher prices their ploy will inflict. They swipe one of the market's aspects—charging more for a scarce good, in this case space on a crowded road—and sever it from competition, the unfailing safeguard against artificially high prices. Their swindle operates in a vacuum, without the feedback and control of competition and pricing. We have no recourse but to use roadways as the state decrees.

A vocal advocate of congestion pricing is The Partnership for New York City. Founded by David Rockefeller in 1979, the Partnership is “a select group of two hundred CEOs (‘Partners’) from New York City's top corporate, investment and entrepreneurial firms. Part-

ners are committed to working closely with government, labor and the nonprofit sector to enhance the economy and maintain New York City's position as the global center of commerce, culture and innovation." In plain English, they seek to effect the most unnatural of acts: interlacing Adam Smith's invisible hand with government's iron fist.

Representing these select Partners at an "event" the Manhattan Institute sponsored to promote congestion pricing was president Kathryn Wylde: "We at the Partnership ask ourselves all the time: What is contributing to the cost of doing business in New York?" That's easy, and I'm not even a Partner, let alone their president: high taxes, strangling regulations, and endless bureaucracy. But no, in the Partnership's cushy world, government is never at fault: "Higher salaries, in a way, directly relate to the length of commute and the difficulty of commute in terms of attracting talent."

The Partners also "wonder why construction costs are going up one percent a month in New York." Another easy one: taxes, regulations, and bureaucracy, specifically the city's months of withholding the permits it requires contractors to buy from it. Wrong again, says our expert: "A major contributor to construction problems and delays is traffic congestion. Congestion also has a negative impact on manufacturing, which is an industry we've been hemorrhaging for the last decade."

Ms. Wylde rejoiced when the feds handed New York \$345 million of your taxes: "Federal funding provides the carrot that will help pay for new buses, faster subways and the other measures required to incentivize people to get out of their cars and on to public transportation." But New York City has already "incentivized" plenty, from frequent and exorbitant tolls to roads with more potholes than paving to cops who snarl traffic while snarling at drivers. Anyone still sitting behind the wheel is there because public transit's disadvantages outweigh driving's, considerable though they are.

Busybodies both political and private have hectored us for decades now, trying to push us onto mass transit. And we don't want to go. We overwhelmingly prefer the comfort, convenience, and privacy of our cars. Congestion pricing is the latest salvo in this war. "Many

US mayors have eyed London's success since 2003 in charging about \$16 for drivers to enter the city at peak times," the *Christian Science Monitor* reported. "Traffic delay in the British capital is down about 17 percent and the use of mass transit is up about 16 percent. One expert calls this a 'virtuous cycle.'"

How arrogant and condescending! Most of the virtuous are the poorer commuters who can't afford yet another automotive tax. Those secretaries and busboys, clerks and janitors will be reluctant customers of New York's public transit, too, under congestion pricing. The city's antiquated subways are dangerous, deafening, dirty, crowded, unreliable, uncomfortable, and inconvenient. They also frequently stink, thanks to New York's dearth of public facilities. No wonder even the impecunious will brave 30-minute delays at bridges and tunnels and some of the nation's highest tolls. Buses are marginally better: they aren't usually as dangerous, deafening, and dirty, but they are every bit as crowded and unreliable. Waiting 15 or 20 minutes for the next one is not unusual. Because taxes compensate the missing revenue when ridership plummets, the city is unlikely to improve the system, however much of our money the feds throw at it.

Chilling Objective

Meanwhile, the Partnership has a chilling objective that may explain the elite fascination with mass transit—for other people: the Partners seek to "allow business leaders to work more directly with government and other civic groups to address broader social and economic problems in a 'hands on' way." Who knew that CEOs stranded in traffic is a "broader social and economic problem"? Powerbrokers and politicians with their chauffeurs and police escorts will no doubt glide about town far more pleasantly when everyone else is banished to the subways.

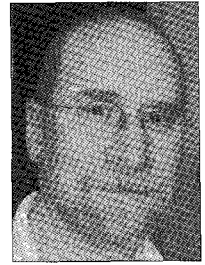
A serf's place is on a bus or train: he shouldn't be clogging the roads for his betters. Under congestion pricing, taxpayers who refuse to submit to the subway's indignities (which now include random and warrantless searches), who prefer the freedom and independence a car brings, will pay for their uppity attitude.

Yet again.



The Constitution or Liberty

BY SHELDON RICHMAN



Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

We might think those words—or words to the same effect—are in the U.S. Constitution. But they are not. They are from Article II of the Articles of Confederation, America's first constitution. They could have been placed in the U.S. Constitution but were deliberately left out in 1787.

After the Constitution was ratified, something *like* Article II was added to the Constitution as the Tenth Amendment. Unfortunately it is like Article II in the same sense that a whale is like a fish—superficially.

The Tenth Amendment says: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The most significant difference is that Article II qualifies the word *delegated* with *expressly*. The Tenth Amendment does not. The difference was no oversight. This suggests that while the Articles of Confederation was a document of express, enumerated congressional powers, the Constitution, contrary to widespread belief, was not.

Professor Calvin H. Johnson of the University of Texas Law School published a paper in 2006 that sheds light on this subject. “The Dubious Enumerated Power Doctrine” presents formidable evidence that the framers had no intention of limiting the national government's powers to the 16 items listed in Article I, Section 8, of the Constitution.

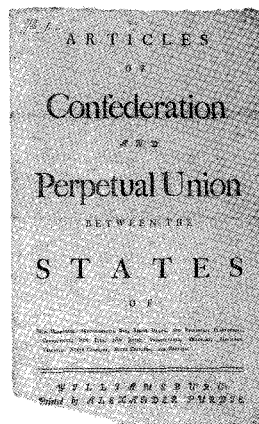
“In carrying over the Articles' wording and structure, they removed old Article II's limitation that Congress would have only powers ‘expressly delegated’ to

it,” Johnson writes. “When challenged about the removal, the Framers explained that the expressly delegated limitation had proved ‘destructive to the Union’ . . . Proponents of the Constitution defended the deletion of ‘expressly’ through to the passage of the Tenth Amendment. That history implies that not everything about federal power needs to be written down.”

The Constitutional Convention operated on the assumption that more, not fewer, powers were needed for the national government than were allowed under the Articles. Johnson quotes some of the framers to indicate this attitude. “The evils suffered and feared from weakness in Government have turned the attention more toward the means of strengthening the [government] than of narrowing [it],” Madison said to Thomas Jefferson.

When the convention began its work the delegates passed resolutions to guide the committees that were drafting particular sections of the document. Johnson writes that one such binding resolution specified that the new government would have every power enumerated in the Articles *and* an additional power (quoting the resolution): “to legislate in all Cases for the general Interests of the Union.”

This is contrary to the common view that Article I, Section 8, of the Constitution necessarily exhausts the national government's powers. That view is undermined by several inconvenient facts. For example, the first clause of Article I, Section 8, states, “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States. . . .” That's a hefty grant of power that does not appear to be further restricted by any subsequent language. (Jefferson



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and Madison disagreed. See Federalist 41 by Madison, keeping in mind that the Federalist Papers were essentially ad copy for the Constitution and against the Anti-federalist opposition.) The 16 specific powers that follow don't appear to be limits on the taxation clause but rather coequal provisions.

But then why include a list of powers? Johnson writes: "Reading the Constitution as giving a general power to provide for the general welfare means that the enumerated powers of clauses 2 through 17 are illustrative of what Congress may do within an appropriately national sphere, but are not exhaustive."

In other words, Congress can't do whatever it wants. It can only act on behalf of the common defense and general welfare. Thus in the eyes of the framers, the government would be limited, but not nearly as limited as today's constitutionalists believe. The view among the framers was that Congress's jurisdiction covered all matters national in scope, leaving local matters to the states. But, as Johnson writes, "both Madison and Hamilton argued that the division between the federal and state governments was a legislative or political question that would be set in the future by competition between those governments for the loyalty of the people."

Implied Powers

We know that the Constitution must have contained implied powers from the beginning. Article I, Section 9, expressly prohibits Congress from doing certain things, such as passing ex post facto laws and bills of attainder, granting titles of nobility, and interfering with the slave trade until 1808. Why would such prohibitions have been thought necessary if Congress could exercise only the enumerated powers? Another example: The Fifth Amendment limits the power of eminent domain, but the Constitution itself does not enumerate any power of eminent domain. It must be implied.

Johnson's argument would not be news to the Anti-federalists, that group of early Americans who feared the proposed Constitution would create an imperial national government with virtually unlimited

power. (It should be noted that southern Anti-federalists like Patrick Henry objected to an expanded national government in part because they feared the taxing power might be used to free their slaves. Thus was a good cause, decentralization of power, perhaps permanently stained by a link to the abomination of slavery. Samuel Johnson had it right, "How is it that we hear the loudest yelps for liberty among the drivers of negroes?") When advocates of the proposed Constitution advertised the document as containing express, enumerated powers, the Anti-federalists and fellow travelers such as Thomas Jefferson scoffed.

For example, James Wilson said: "The congressional authority is to be collected, not from tacit implication but from the positive grant expressed in the [Constitution]. . . . [E]verything which is not given [to the national government], is reserved [to the states]."

To which Jefferson replied: "To say, as Mr. Wilson does that . . . all is reserved in the case of the general government which is not given . . . might do for the Audience to whom it was addressed, but is surely *gratiss dictum*, opposed by strong inferences from the body of the instrument, as well as from the omission of the clause of our present confederation [Article II], which declared that in express terms."

How the Constitution was intended to be interpreted and how it was in fact interpreted under the pressure of public opinion were initially two different things. As historian and economist Jeffrey Rogers Hummel explains, "To oversimplify only slightly, the Federalists got their Constitution, but the Anti-Federalists determined how it would be interpreted." For a while anyway.

Calvin Johnson is happy the Constitution has implied powers. No libertarian would be. But we must separate what the Constitution appears to say and how we evaluate it, and resist the temptation to let our political-moral views warp our reading. As Lysander Spooner in 1870 wrote, the Constitution "has either authorized such a government as we have had, or has been powerless to prevent it." Liberty's champions have to come to terms with that logic.



Prosecutorial Indiscretion

BY WENDY MCELROY

Last July 26 former Durham County District Attorney Michael Nifong offered a full and unqualified apology for his crusade to convict three palpably innocent white Duke University students of raping a black woman in March 2006. Nifong acknowledged there had been “no credible evidence” of their guilt. Indeed, there had been exculpatory evidence that he had quashed. His apology was rendered to a judge who would then sentence him to one day in jail and a \$500 fine for contempt of court. He could have received 30 days.

Because the Duke “rape” scandal unraveled on national television, it has prompted widespread reconsideration of a legal doctrine that made Nifong difficult to effectively sanction despite his clear misconduct. Absolute prosecutorial immunity is a legal doctrine established by federal precedent and by federal civil-rights statute 42 U.S.C. § 1983; it provides a prosecuting attorney with immunity from lawsuits or criminal charges for his acts, whether or not they constitute intentional misconduct. The doctrine is intended to protect prosecutors from frivolous and retaliatory actions that could cripple their ability to do their jobs. Checks and balances in the legal system—for example, the power of state bar associations to disbar lawyers and of judges to impose sanctions like contempt of court—are supposed to prevent abuse. But Nifong’s conduct revealed how such immunity invites abuse and raised questions about what hap-

pened to those checks and balances during the Duke “rape” case.

Why would a prosecutor abuse his power? There are several possible motives, including the fact that the DA’s job can be a steppingstone to higher political office for a prosecutor with a high conviction record or high-profile cases that draw media attention.

Why would a prosecutor abuse his power? There are several possible motives, including the fact that the DA’s job can be a steppingstone to higher political office.

At the time of the Duke case Nifong was in a hotly contested campaign for DA of Durham County, North Carolina. (Governor Mike Easley had formerly appointed Nifong to the office.) Nifong received only 49 percent of the vote even though one of his opponents was not on the ballot; a second one had stated that he ran only to oppose Nifong and would “refuse to serve.” Nifong’s slim victory depended on the support of black voters who viewed the “rape” as a racial hate crime and so clamored for prosecution. Durham’s population is approximately 44 percent black, and turnout in black districts was not only high but also overwhelmingly for Nifong.

In the predominantly black Precinct 42, for example, all but 18 votes went to him. Both the extremely powerful Durham Committee on the Affairs of Black People and the People’s Alliance endorsed Nifong’s candidacy; both organizations wanted a trial.

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Thus Nifong's overall support in Durham was weak and whatever strength he could flex as DA was tied to a promise to prosecute.

Moreover, Nifong's highly unusual conduct in the early stages of the case raised speculation about whether he wished to use the prosecution as leverage into a more powerful office. Even before indictments had been handed down, Nifong gave several dozen interviews to national media in which he declared his absolute belief that white members of the Duke lacrosse team had raped a black woman. The case catapulted him into national prominence as a protector of women and minorities.

In short, Nifong had a vested interest in prosecuting whether or not evidence or law could support a trial.

From the very beginning his abuse of office prompted comment among legal analysts. For example, the spectacle of a DA on a media tour immediately raised questions of whether Nifong was "polluting the jury pool"—or, rather, the potential jury pool, since no one had then been indicted.

Ultimately, his abuses of office included: the ordering of a police identification that was tainted because the "photo line-up" consisted only of the lacrosse team; relying on the testimony of the only eyewitness (Kim Roberts, "the second stripper"), whose story changed dramatically several times; refusing to consider the well-established alibi of one of the accused (Reade Seligmann) or to meet with defense attorneys; not interviewing the alleged rape victim (Crystal Mangum) of whom he had proclaimed to the media, "I believe her"; and, quashing exculpatory DNA tests.

In these and other abuses, Nifong undoubtedly drew confidence from the doctrine of absolute prosecutorial immunity that protected him against criminal and civil consequences for acts committed as DA. But why did the other checks against abuse not click into place?

First, what happened with the North Carolina State Bar Association? As the agency that regulates lawyers, it has the ability to impose sanctions ranging from a

reprimand to a revocation of license. A local newspaper, the *News and Observer*, reported on December 3, 2006, "Public record requests . . . uncovered at least 17 complaints concerning Durham District Attorney Mike Nifong to the N.C. State Bar. . . . The complaints accuse Nifong of saying too much to the news media and of mishandling the investigation." Because such complaints become public only when copied to the governor or attorney general, there may be many more than 17. The North Carolina State Bar did not act, which may have been appropriate depending on the nature of the complaints. Nevertheless, state bar associations have reputations for being reluctant to sanction their own, especially district attorneys.

Judges also have the power to sanction in several

ways, including the dismissal of charges and holding lawyers in contempt. In North Carolina a judge can remove a district attorney from office for extreme and "willful misconduct." Until the revelation that he had suppressed exculpatory DNA evidence, however, the various judges on the case did not seem inclined to curb Nifong. In an essay titled "Reconsidering Absolute Prosecutorial Immunity" (*Brigham Young University Law Review*, 2005), legal scholar Margaret Z. Johns explains, "As the thousands of appellate findings of prosecutorial misconduct show, trial judges fail to

protect the defendant from misconduct. Even when the trial court catches the misconduct and has the power to remedy the situation, the offending prosecutor is rarely identified publicly. This problem is exacerbated in states where judges stand for election."

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Political Restraint

Political pressure can also serve as a restraining factor. This would have been particularly true with Nifong, a political appointee during the early stages of the case. But Governor Easley is a fellow Democrat who relies on the same voter bloc as Nifong. State Attorney General (AG) Roy A. Cooper could have

acted, but he is also a Democrat. Moreover, Cooper may have had larger political ambitions; Easley became governor after serving as AG. Indeed, before the Duke case Cooper was mentioned as a possible Democratic candidate for governor. Since the collapse of the case he has announced his intention to run for re-election as AG this year. Other officials were similarly disinclined to exert pressure. Bill Bell—then mayor of Durham—commented, “By and large, people want it [the case] to be decided in court.” As a Democrat and a black, Bell also drew on the same voter bloc as Nifong.

In short, the usual checks against abuse of immunity did not work. Those who should have exercised restraint even ignored appeals from U.S. Rep. Walter Jones (R-NC) who eventually wrote then-U.S. Attorney General Alberto Gonzales to request a federal investigation.

It was only in December 2006, in the wake of a sharp public backlash against Nifong’s behavior, that the agencies and individuals responsible for oversight began to exercise restraint. The specific event: at a pretrial hearing, Brian W. Meehan—the director of the private lab that performed DNA testing on the rape evidence—stated that he had found sperm and other DNA material from several men, none of whom were the accused. Meehan reported the results to Nifong, who chose to omit them from the summary report that he turned over to the defense attorneys.

One week later Nifong dropped all rape charges, but proceeded with two other counts of kidnapping and sexual assault. It was too little too late; the defense attorneys now had the necessary ammunition to effectively ask for sanctions against Nifong and to seek his removal from the case.

Nevertheless, Nifong was still largely protected by the doctrine of absolute prosecutorial immunity. Any action that the falsely accused contemplated would also confront Nifong’s immunity as a prosecutor.

The key qualification is the word “prosecutor,” and it may provide loopholes through which criminal and civil actions against Nifong by the accused are still possible.

Here the main question about Nifong’s immunity is not whether he committed misconduct, but what function he was serving when he did so. Specifically, was he acting in the role of prosecutor?

Court Rulings

The U.S. Supreme Court case *Imbler v. Pachtman* (1976) is often cited in discussion of prosecutorial misconduct. In its decision the court distinguished between “those aspects of the prosecutor’s responsibility that cast him in the role of an administrator or investigative officer rather than that of advocate” (that is, a prosecutor). Depending on the function he or she is performing, a government official receives either absolute or qualified immunity. It is only in the role of prosecutor that a DA has absolute immunity. Otherwise, his immunity is qualified.

The difference between the two immunities is this: absolute immunity absolves the prosecutor from liability even for malicious acts; qualified immunity only shields the prosecutor if he or she has not violated clearly established law with which the prosecutor should have been familiar. Under qualified immunity Nifong would be open to charges of misconduct.

In short, Nifong’s legal vulnerability hinges on the role he was playing when he acted, not on the actions he took. Did he act as a prosecutor, an investigator, or an administrator? Consider the press conferences held by Nifong; most of them occurred before an indictment had been sought—that is, before he functioned in the role of a prosecutor. The case was in the investigative phase. If the defense can prove Nifong knowingly made false and prejudicial statements to the media then, prosecutorial immunity won’t necessarily protect him against a civil suit for libel.

Consider also the tainted photo identification on which the indictments drew. It was widely reported that Nifong directed the police to violate their own suspect-identification procedures by omitting non-suspects (men who were not members of the lacrosse team) from the photo lineup; then the accuser was told that all photos were of players who had been at the scene of the alleged rape. If this is true, then Nifong acted as an investigator and has only qualified immunity.

The very fact that it is necessary to jump through hoops to address Nifong’s blatant abuse, however, highlights the problems with granting a priori and blanket immunity to anyone in power.

Political Environment

First, the checks do not work and cannot be expected to work in a political environment or in the presence of vested interests. With Nifong it required nationwide public fury and the equivalent of a smoking gun in one hand and a confession in the other for oversight to commence.

Second, the victims are re-victimized by the extreme lengths to which they must go to receive restitution if, indeed, restitution is open to them at all.

If prosecutorial misconduct were rare, the situation might not be so disturbing. But recent studies indicate that the problem arises with some frequency.

Again in "Reconsidering Absolute Prosecutorial Immunity," Margaret Johns observes, "[A] 2003 study presents alarming evidence of the frequency of prosecutorial misconduct resulting in the wrongful conviction of hundreds of innocent people." The referenced study is a report from the Center for Public Integrity, which found that since 1970 there have been over 2,000 cases in which prosecutorial misconduct was deemed sufficiently prejudicial to require the dismissal of charges, the reversal of convictions, or reduction of sentences. In 513 other cases, dissenting and concurring court opinions discussed possible misconduct. In thousands of other cases prosecutorial misconduct was found by appellate courts that, nevertheless, upheld convictions. Given how difficult it is to prove misconduct and how resistant the system can be toward sanctioning "its own," those figures are probably low.

Johns continues, "This conclusion [that prosecutorial misconduct is a frequent occurrence] is reinforced with the ongoing investigation by the Innocence Project . . . which reported that, as of January 2005, 154 people who served time in prison for crimes they did not commit have been exonerated by DNA evidence.

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In many of these cases, prosecutorial misconduct contributed to the wrongful convictions. . . . [O]ne can no longer dismiss the problem of prosecutorial misconduct as infrequent nor pretend that sufficient safeguards exist in the system to protect the innocent from wrongful convictions."

Indeed, since the Nifong scandal, recent media attention has focused on other cases that appear to involve overzealous prosecution if not outright misconduct.

A reconsideration of this legal doctrine is long overdue. Wrongful convictions are human tragedies not only to the one convicted but also to his or her family; they also mean, when an actual crime has been committed, that the guilty party has remained free to brutalize again.

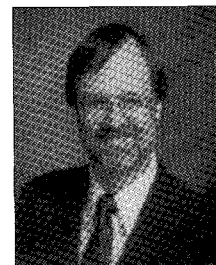
Absolute immunity was never meant to protect the suppression of evidence, dilute police procedure, or allow flagrant violation of civil rights. But for unethical and ambitious attorneys it has become a blank check on the misuse of power. The cited study from the Center for Public Integrity provides a fascinating statistic. It found that of the 2,000 established cases of prejudicial prosecutorial misconduct, in only 45 cases

were the attorneys disciplined, and none were criminally prosecuted. So even though prosecutorial misconduct may be more common than suspected, there exists no corrective mechanism or deterrent, little accountability, and rarely a civil remedy.

The way to solve the problem is to remove absolute immunity and make prosecutors accountable for their intentional bad acts or for acts they should have known were violations of law. Allow their victims to file civil suits. Prosecutors should not receive more protection than other individuals for their misconduct; indeed, they should be held to a higher standard. 

Madison's Veto Sets a Precedent

BY BURTON FOLSOM, JR.



Today, when a president looks at a spending bill that has passed Congress, he typically asks, "How will this help my party gain votes?" and "What interest groups will this bring to my side?" Sometimes, when modern presidents are more philosophical, they ask, "Will this spending help the economy, or advance the nation's interests?"

Our first presidents approached spending bills very differently. The first question they usually asked was, "Is this spending constitutional?" Only if the answer was yes would they then ask if it was wise, if it would benefit the nation, or if it would gain votes.

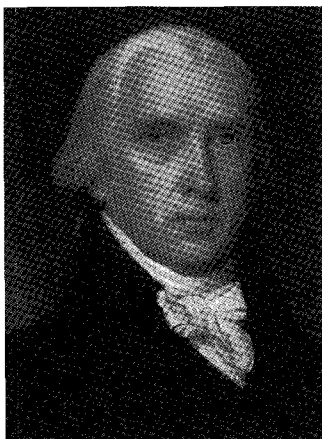
These early presidents viewed the Constitution as a binding document that separated the powers of government for a purpose. Only if power were decentralized, they argued, could tyranny, high taxes, and government oppression be avoided. Thus Article 1, Section 8, of the Constitution restricted the power of Congress to spend taxpayer dollars to a limited number of items, mainly national defense.

An example of how early presidents adhered to the Constitution—even when it would have been politically expedient to do otherwise—is the issue of federal aid for internal improvements, the building and improving of roads, canals, and waterways in our new nation. The Constitution does not grant Congress the right to appropriate funds for roads and canals. The Founders did recognize that improving our highways was essential for economic development, but they believed that states or private companies should do the work; neither good government nor just results occurred when the people in Georgia could be taxed to build a canal in New York.

The problem, of course, is that congressmen in New York had incentives to argue that federal funds could be

used profitably and in the national interest to build the Erie Canal. Since votes in the large state of New York were pivotal in many presidential elections, our early presidents had to decide whether to chase votes or follow the Constitution. Sometimes our presidents failed the test. For example, President Thomas Jefferson supported the construction of the inefficient National Road from Maryland to Illinois.

James Madison, who followed Jefferson as president, seems to have supported the National Road, but he learned from the experience. He directly confronted the issue of federal aid to internal improvements in his



James Madison (1751–1836)

next-to-last day as president. Congress had passed what was labeled the Bonus Bill of 1817, which would have used federal funds to build roads and canals across the nation. Madison responded with a thundering veto. "I am constrained," he said, "by the insuperable difficulty I feel in reconciling the bill with the Constitution."

Madison admitted the bill would probably help his country, but then he observed that "such a power is not expressly given by the Constitution . . . and can not be deduced from any part of

it without an inadmissible latitude of construction and a reliance on insufficient precedents."

The promoters of the bill in Congress had argued that building roads and improving rivers at federal expense would "render more easy and less expensive the means and provisions for the common defense." Madison retorted: "To refer the power in question to the clause 'to provide for the common defense and general welfare' would be contrary to the established and consistent rules of interpretation." He added: "Such

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a view of the Constitution would have the effect of giving to Congress a general power of legislation instead of the defined and limited one hitherto understood to belong to them, the terms 'common defense and general welfare' embracing every object and act within the purview of a legislative trust."

Madison concluded that twisting the General Welfare clause in this way "would have the effect of subjecting both the Constitution and the laws of the several States in all cases not specifically exempted to be superseded by laws of Congress."

These words from Madison carry exceptional weight because he was a chief architect of the U.S. Constitution. At the convention in Philadelphia in 1787, Madison sat in front of the presiding officer. He never missed an important speech, and he took copious notes on the proceedings. When he says that the General Welfare clause cannot be used to give Congress "a general power of legislation instead of the defined and limited one," he is echoing the original intent of the Founders.

Even so, Madison's veto may have surprised Congress because earlier he had conceded that "establishing throughout our country the roads and canals . . . can best be executed under the national authority. No objects within the circle of political economy so richly repay the expense bestowed upon them." Madison believed, however, that the country was better off following the Constitution rather than twisting its meaning to secure more rapid economic growth. If we want federal road-building, then pass a constitutional amendment to permit it.

Madison's principled veto of the Bonus Bill of 1817 set a precedent that lasted for generations. The Erie Canal, for example, never received federal funds. In 1830, however, Congress tested the resolve of President Andrew Jackson with the Maysville Road Bill, which would have used federal funds to build a turnpike in Kentucky.

Jackson scrupulously followed Madison's lead and

vetoed the bill. Sure, the proposed turnpike might be economically sound, Jackson conceded, but if the country used federal funds to build a turnpike in Kentucky, "there can be no local interest that may not with equal propriety be denominated national." He echoed Madison by adding, "A disregard of this distinction would of necessity lead to the subversion of the federal system."

Madison and Jackson were also following George Washington's advice in his Farewell Address. "[Avoid] the accumulation of debt," Washington admonished, "not only by shunning occasions of expense, but by vigorous exertions in time of peace to discharge the debts which unavoidable wars have occasioned, not

ungenerously throwing upon posterity the burthen which we ourselves ought to bear."

Debt Retired

During Jackson's presidency the United States fulfilled Washington's request and retired all its national debt. In large part, Jackson argued, the new annual surpluses reflected the frugality exemplified by refusing to

use federal funds for internal improvements. The government had raised a small amount of revenue each year through tariffs, the sale of land, and excise taxes, especially on whiskey. But the nation had followed the Constitution and limited spending mainly to national defense—two wars with Britain and occasional Indian removal.

In Jackson's veto of the Maysville Road, he observed that on "the national debt we may look with confidence to its entire extinguishment in the short period of four years." We were a nation "free from debt and with all her immense resources unfettered! What a salutary influence would not such an exhibition [of restraint] exercise upon the cause of liberal principles and free government throughout the world!"

James Madison, who lived to see the national debt removed, could point to his veto of the Bonus Bill as crucial in this achievement.



Madison's principled veto of the Bonus Bill of 1817 set a precedent that lasted for generations.

The Game of Politics

BY GEORGE C. LEEF

In a recent column in *Metro* magazine, published in Raleigh, North Carolina, the former chancellor of the University of North Carolina at Wilmington, Jim Leutze, lamented that “calling for conservation [is] like shouting down a well.” He is unhappy that the state legislature has so far resisted proposals to increase taxes to fund the kinds of conservation projects he favors.

His piece gives a wonderfully clear view into the mind of a modern political “liberal”—someone who thinks it’s good to impose taxes on the citizens of a state so politicians will have enough money to do what they want. That’s the game of politics.

Leutze is alarmed that “we are losing 277 acres of natural or agricultural land every day to development.” Phrasing it that way makes it sound as though a black hole were sucking away precious North Carolina real estate. I would like to suggest an alternative and less alarming view: owners of agricultural or natural land sell 277 acres of land per day to people who believe that they can profit by building something on the land. I don’t see why we should worry about voluntary transactions in which both buyer and seller expect to be better off. When people take raw materials (iron ore or trees, for example) and use them to make products, we don’t say that the resources have been “lost to development” but instead understand that they have been transformed into a different, more valuable state. I submit that we should look at real-estate sales the same way.

Now, just what is it that Leutze wants to conserve?

For one thing, he wants to ensure that we continue to have enough “open space.” In the abstract, that sounds desirable, but is there any possibility that North Carolinians would ever not have enough open space if the sort of land sales discussed above continue? I don’t see how. There are new developments going in all around Raleigh, but I have never for a second felt a shortage of open space. I didn’t even feel any shortage of space when I spent a weekend in New York City recently, and no part of North Carolina is ever going to be as heavily populated as New York. If this is really one of

Leutze’s concerns, all right, but it isn’t one of *this* taxpayer’s concerns.

Another thing Leutze worries about is the decline in fish houses along the coast. He writes, “The salty-talking, sun-tanned, gnarled-handed, squinty-eyed, independent waterman is a valued part of our culture as captured in song and legend. But you better take a quick look because his way of life is being squeezed out. To take only the aspect

of the problem relevant to this article, between 2000 and 2006, 39 of the 117 fish houses closed or were up for sale. That is a 33.3 percent decline.”

Perhaps to someone from around Wilmington, fish houses and the colorful characters who frequent them are charming, but—sorry—this taxpayer couldn’t care less. Whatever a fish house is, to me it isn’t a “beloved landmark,” and if the people who own them choose to

I don’t see why we should worry about voluntary transactions in which both buyer and seller expect to be better off.

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sell their properties, that doesn't make my life one bit worse. The same is true about the decline of other old-fashioned commercial enterprises, like barbershops and drive-in movies. Once they're no longer economically viable, I see no reason to keep them around for the sake of nostalgia.

None of Leutze's enthusiasms would matter to me if it weren't for his proposed way of satisfying them. He wants the government to increase taxes to accumulate funds so the state can purchase and conserve property. As I see it, that is simply using the coercive power of the government to force everyone to give up some money so that conservationists can get what they want at little expense to themselves.

Leutze advocates increased taxes on a variety of things, including real-estate conveyances, building permits, and restaurant meals. The new taxes would only add a little bit to our cost of living in the state, he observes, so why not use them so the government can afford more conservation?

That's modern liberalism for you. Let's forcibly extract a little more from the wallets of the people so public officials can do "good things" with the money. The trouble is, there is no end to the demands that interest groups make for the government to do "good things," and as a result, the tax burden continues to climb and climb. Focusing on the supposed benefit of saving fish houses and having more open space, Leutze ignores the fact that millions of individuals who have their own unique goals would be forced to give up some of their wealth to pay for conservation that is of no importance to them.

I can see no justification for employing the coercive power of the government against taxpayers just so a few individuals can bask in the warm feeling that they have done something for "society." That the amounts

involved are small (for example, a 1 percent restaurant meal tax) is just as irrelevant to the morality of this as it would be for a worker who steals from his employer to say, "I only take little things that will hardly be missed."

The Moral Alternative

There's an alternative to the use of government coercion. Those who want to conserve open space, fish houses, drive-ins, or anything else can attempt to raise the money through private contributions. The Nature Conservancy buys land that way. Leutze could set up a Save the Fish Houses Fund and

ask for donations. That would no doubt be harder than importuning the politicians to raise taxes and buy the land he wants to protect from development, but it has the virtue of being morally respectable since it requires no coercion.

It might also work better. Years could elapse before the General Assembly acts, but if Leutze and others who share his concerns wanted to pool their money, they could probably buy a fish house next week.

Looking to government to accomplish social objectives through coercion is a bad habit many Americans have gotten into. People easily convince themselves that the things they want are really high-minded benefits for the whole of society, and so they play the political game of pleading with elected officials to spend tax dollars according to their vision. That leads to a heavily politicized country where tremendous resources are squandered on campaigning and lobbying—and where taxes keep increasing.

We would be much better off if the government stuck to the few tasks necessary to protecting people's rights and left everything else to voluntary efforts. 

There is no end to the demands that interest groups make for the government to do "good things," and as a result, the tax burden continues to climb and climb.

Volunteer Railways in Britain

BY JAMES L. PAYNE

In 21st-century England you don't expect to find a fireman shoveling coal into a steam locomotive, but that's what 59-year old Paul Rimmer does. During his shift on the North Yorkshire Moors Railway, he heaves two tons of coal from the tender of engine 45212 into its roaring firebox, a tougher job than almost any in modern Britain. If encountering a real live locomotive fireman is unusual, consider this second surprise: Paul is a volunteer, devoting one week a month to his backbreaking, fiery labors. He's part of the modern British movement relying on philanthropy and volunteerism to save historic railroads.

In 1948 the British government took over ownership of all the railroads. Socialist theory had it that government management would make for greater efficiency, but the reality proved to be the opposite. The railroads drowned in a sea of red ink, and the government responded by closing branch lines, one after the other. In the period between 1962 and 1969, active railroad mileage dropped from 17,500 to 12,100.

The affected communities protested the loss of service, but when political means failed, local activists and philanthropists stepped in to buy and operate the railroads themselves. They formed nonprofit organizations, or "charities" as the British call them, to preserve a distinctive part of their local history.

Today, there are scores of these "heritage railways" in the country, some 57 standard-gauge lines and 42 narrow-gauge ones. The North Yorkshire Moors Rail-

way (NYMR), founded in 1973, is one of the largest and most successful. It runs eight trains a day on a regular schedule throughout the year on a standard-gauge line, climbing from the seacoast town of Whitby on the North Sea through the Yorkshire Moors National Park to the town of Pickering, an 18-mile route. Like most heritage railways, it relies heavily on volunteers who serve as engineers, firemen, conductors, station managers, and signal operators. Each station also has a vol-

unteer maintenance crew that repairs and paints equipment and buildings. When I visited the Pickering station last summer the volunteer maintenance crew was refurbishing the baggage shed, painting it white and green, the official colors of the railroad back in the 1930s. In addition to some 200 volunteers, the NYMR has a substantial paid staff of workers in management, marketing, gift shops, and track and engine maintenance.

Another railway I visited, the Bolton Abbey and Embsay line, is almost entirely volunteer-run. It has only three paid staff members, including a manager, a shops manager, and a part-time secretary; all the other jobs are done by some 60 volunteers. The day I visited I found the volunteer crew in the carriage-restoration shop hard at work. Their supervisor is Peter Barry, a firefighter in Leeds before he took early retirement. He has been volunteering for nine years, working three days a week in

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Socialist theory had it that government management would make for greater efficiency, but the reality proved to be the opposite.

the carriage shop, as well as working at night doing paperwork for the operation. I asked him about his motivation for volunteering.

"I always loved trains," he said. One experience especially moved him. Several years before he started volunteering, he took his grandson to ride a steam train. He saw that the boy was enthralled by the sights, noises, and smells (the dominant odor, by the way, is the smell of your mother's steam iron). "I tell you, tears came down my eyes," he said, drawing his fingertips down his cheeks. "And I was just so grateful that somebody had gone to the trouble to save these trains, so that my grandson and I could have this experience."

Another motive for the volunteers is the camaraderie, which I could see as the men worked and joked together. They often gather in the evenings at the pub, Peter said, where they stand out as an unusually convivial group.

"One night the barmaid asked me—she couldn't understand why we were carrying on so—'what do you have in common, you seem to be such good friends?'"

Heritage railways are part of the tourism and entertainment industry. The startup and acquisition costs are covered by fundraising, subscriptions, and major philanthropic gifts, but once operational, they get most of their income from the tourists and railroad fans who want to ride them. On a typical road like the NYMR and Bolton Abbey lines, this business amounts to several hundred thousand riders a year. They further cater to the tourist traffic with restaurants and gift shops in the stations, luxury dining trains, and special events like Thomas the Tank Engine day (when the smiley-face locomotive, made popular in the children's books, is brought in).

Another significant source of income are filmmakers. Steam engines make great visuals, and studios filming period dramas hire the railways to shoot

footage. The North Yorkshire Moors Railway has been used for *Brideshead Revisited*, *All Creatures Great and Small*, and J. K. Rowling's *Harry Potter and the Philosopher's Stone*.

In general the heritage railways get no tax funds to cover operating costs. Sometimes, government or quasi-governmental units make grants for property acquisition and capital projects. For example, the Bolton Abbey line got \$600,000 from the European Community Development Fund to build an engine shed.

Though their financial support comes from a variety of sources, volunteers are the soul of the preserved railways. Some 23,000 volunteers nationwide founded

them and direct them. Like Paul Rimmer, some shovel coal; others man ticket booths, work in gift shops, repair carriages, and inspect track. On occasion, volunteers have constructed road-bed, taking up pick and shovel to clear a path for their beloved trains.

There may be a larger social lesson here. The usual debate over how to provide public services sees only two possible systems: capitalism or socialism. In their



The North Yorkshire Moors Railway, one of Britain's most successful heritage railways. (Photo by Rob Lyne)

200 years of history, the railroads in Britain have followed a shifting mixture of these models, and neither one has proven to be entirely satisfactory. Both have faced an underlying political dilemma: How do you get customers to pay for monopoly-type services without suspicion and resentment?

Under socialism railroads are subsidized, that is, paid for through taxation. People don't like that because they don't like having money taken from them against their will, and they get especially resentful when their tax money supports inefficiency, featherbedding of workers, and overpaid administrators. It was this dissatisfaction that led, after some 40 years of state control, to the privatization of the railroads in 1993.

Capitalism has the advantage of being efficient, but that doesn't make the public any happier. The problem

is that the premise of capitalism is financial self-interest: everyone involved in the enterprise is expected to be selfishly extracting the maximum benefit for himself. Hence, the consumer sees his money going to seemingly excess profits for investors and lavish salaries for administrators. This resentment is especially noticeable on British railways today. The private companies that have leased the railways run them fairly well, but their complex fare schedules and seemingly high prices lead many travelers to believe they are being gouged by private firms trying to maximize profits. The result is that many Britons look fondly at the idea of re-nationalizing the railroads, believing that that would take greed out of the picture. But of course it would bring back the inefficiency of having no bottom line.

The heritage railways have bypassed this dilemma. They represent a third system, which we might call voluntarism. This model has generally not been recognized in the debates on social and economic organization because of the complexity and breadth of the motives it involves. Socialism and capitalism are easier to theorize about because they rest on simple, narrow motives. In the case of socialism, the motive is fear. The government is assumed to know what is best, and it forces people to obey its decisions by threatening them with violence against their person or property. It's easy to understand how the fear of going to jail will make people pay taxes to fund government's railroads.

Material Self-Interest

With capitalism, the motive is also simple and basic: material self-interest. Again, we can readily grasp how the desire for money will motivate businessmen to provide a public service.

Voluntarism, on the other hand, rests on the complex and rather subtle motives we might characterize as self-expression. These include idealism, generosity,

sociability, and a sense of achievement. These motives are hard to define and measure, so we tend to discount them when thinking about social organization. We tend to be skeptical that an organization based on "mere" charity or enthusiasm or friendship could accomplish anything significant. But, as the volunteer railroads demonstrate, these impulses certainly can have important, socially useful effects.

Do the heritage railways point the way to a brighter future when more public services will be based neither on the coercion of the state nor on the economic self-interest of owners? It's an ideal worth working toward,

but optimism needs to be tempered with caution. The problem is, as we just noted, that the world has yet to recognize and value voluntarism as an independent approach. Hence voluntarism, when it occurs, happens unintentionally, by default. This was how the heritage railways got started. Their founders did not reject socialism and capitalism and consciously devise organizations based on self-expression. They turned to voluntarism because they didn't have enough political clout to get subsidies and could not interest investors in these uneconomic small lines.

Lacking a philosophic commitment to voluntarism, the heritage railways may be unable over the long run to sustain their volunteer character. It is possible that several generations from now these groups will have lost their idealism and become income-maximizing commercial firms or tax-subsidized branches of government.

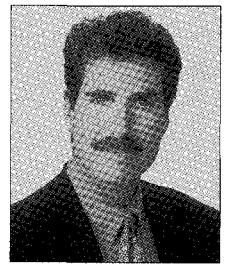
But for the present, these railways provide a remarkable, real-world demonstration that human beings are capable of operating a public service grounded on motives of self-expression. And, judging from the enthusiasm I saw on faces in the stations and on the trains, these organizations have found a way, for perhaps the first time in British history, to make passengers love their trains.



The world has yet to recognize and value voluntarism as an independent approach. Hence voluntarism, when it occurs, happens unintentionally, by default.

Don't Look to Government to Cool Down the Planet

BY JOHN STOSSEL



Recently on “20/20” I said “give me a break” to Al Gore for claiming that the global-warming debate is over and suggesting that all dissenters were in it for the money. I interviewed independent scientists who say Gore is wrong.

Some people were relieved to finally hear the other side: “Thank you, thank you, thank you for your report on climate change. . . . I’m sick of hearing ‘the debate’s over’ and writing anyone who differs off as a nut. This report showed the true nature of the debate and true lack of consensus, something you can’t get anywhere else.”

Others were just mad: “Your 20/20 report on Global Warning made me sick. . . . Your sarcastic ridiculing of Al Gore . . . I have lost all respect for you and your reporting.”

Yes, the globe has warmed, but whether severe warming is imminent and whether human beings are causing it in large degree are empirical questions that can’t be answered ideologically. The media may scream that “the science is in” and the “debate is over,” but in fact it continues vigorously, with credentialed climate scientists on both sides of the divide. The Intergovernmental Panel on Climate Change (IPCC) may present a “consensus view of scientists,” but the “consensus” is not without dissent.

“Consensus is the stuff of politics, not science,” says Paul Reiter of the Pasteur Institute.

The scientific process ought to be left to play itself out with as little political bias as possible. Politically influenced research is poison to science.

Part of the problem is the IPCC itself. Reiter points out, “It’s the inter-governmental panel on climate change. It’s governments who nominate people. It’s inherently political. Many of the scientists are on the IPCC because they view global warming as a problem that needs to be fixed. They have a vested interest.”

Phillip Stott, professor of biogeography at the University of London, says that the global-warming debate has become the new “grand narrative” of the environmental movement. “It’s something for people to get excited about and protest. It’s more about emotion than science.” While the scientists thrash things out, what are the rest of us to do?

There are good reasons to begin with a presumption against government action. As coercive monopolies that spend other people’s money taken by force, governments are uniquely unqualified to solve problems. They are riddled by ignorance, perverse incentives, incompetence, and self-serving. The synthetic-fuels program during the Carter years consumed billions of dollars and was finally disbanded as a failure.

The push for ethanol today is more driven by special interests than good sense—it’s boosting food prices while producing a fuel of dubious environmental quality.

Even if the climate really needs cooling down,



Al Gore

Photo by Brett Wilson. Licensed under Creative Commons Attribution 2.5.

John Stossel is co-anchor of ABC News’ “20/20” and the author of Myth, Lies, and Downright Stupidity: Get Out the Shovel—Why Everything You Know is Wrong, now in paperback. Copyright 2007 by JFS Productions, Inc. Distributed by Creators Syndicate, Inc.

government can't be counted on to accomplish that. Advocates of carbon taxes and emissions trading talk about reducing CO₂, but they promise no more than a minuscule reduction in temperature. Temperature reduction is supposed to be the objective.

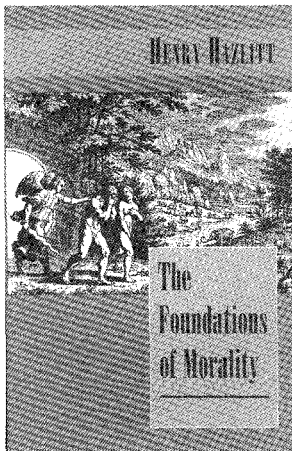
In fact, even drastic plans to cut the use of carbon-based energy would make only a negligible difference. As John Christy, director of the Earth System Science Center at the University of Alabama in Huntsville and a member of the United Nations Intergovernmental Panel on Climate Change, wrote recently in the *Wall Street Journal*:

"Suppose you are very serious about making a dent

in carbon emissions and could replace about 10 percent of the world's energy sources with non-CO₂-emitting nuclear power by 2020—roughly equivalent to halving U.S. emissions. Based on IPCC-like projections, the required 1,000 new nuclear power plants would slow the warming by about 0.2 degrees Fahrenheit per century. It's a dent."

I agree with Stott, who says, "The right approach to climate change is adaptation—and the way to do that is to have strong economies."

We will have a strong economy if we don't give up our freedom and our money to fulfill the grand schemes of big-government alarmists. 



The Foundations of Morality

By Henry Hazlitt

In this impressive work Henry Hazlitt explores the proper foundation of morality, offering a unified theory of laws, morals, and manners. Noted economist Leland Yeager, in his foreword to this edition, says that *The Foundations of Morality* "provides (in my view) the soundest philosophical basis for the humane society that is the ideal of classical liberals."

This challenging work on ethics fits in the great tradition of Adam Smith's *Theory of Moral Sentiments* and David Hume's *Treatise of Human Nature*. It is a well-reasoned, tightly argued book that amply rewards its readers.

Published by the Foundation for Economic Education.

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Capital Letters

David Hume and Reason

In the very title of his article in *The Freeman* of October 2007, Frank van Dun asks, “Can We Be Free If Reason Is the Slave of the Passions?” His article is uncommonly long and gauzy for a *Freeman* piece; and his citations to David Hume’s *Treatise of Human Nature* are few and imprecise, putting the reader to some trouble to locate the full contexts of the remarks quoted or paraphrased. Still, van Dun’s message comes across: disparagement of Hume’s classical-liberal credentials (even though Ludwig von Mises and F. A. Hayek admired and drew inspiration from Hume’s sociopolitical philosophy).

In asking “Can We Be Free . . . ?” van Dun is not referring to the still-thorny philosophical issue of free will versus determinism. He is presumably asking about personal and political freedom, about life in a free society. And he is implying, still rather gauzily, that Hume’s observations about reason and the passions tend to undercut the case for freedom.

Van Dun misunderstands and puts the worst possible interpretation on what Hume says. Hume does not disparage reason, understood as factual observation and logic; he does not glorify action and policy based on sheer emotion or whim. Not at all, as his descriptions of the requirements for a free and prosperous society illustrate. Far from disparaging reason, Hume is asserting the *distinction* between reason and the passions—between *is* and *ought*, as he says, or, in modern terminology, between positive propositions and value judgments; and he is explaining how the former can bear on the latter.

Despite what van Dun says, a value judgment (an *ought*, a judgment involving the passions) cannot be rigorously derived from positive propositions (deliverances of reason) *alone*. (By *alone* I mean: taken with absolutely no admixture of value judgment.) The necessary value judgments may be so tame and intuitive that we hardly are aware of making them; but some value content in the premises, even if tacit, is necessary to arrive at some further and perhaps more specific *ought*.

Van Dun suggests that “If A is B, then you ought to believe that A is B.” But not so fast. Readiness to accept true propositions is conducive to a satisfying personal life and to a well-functioning society. This is a plausible factual generalization, but no value judgment has been introduced so far. To reach van Dun’s *ought*, we also need a value judgment (a “passion”), like approval of satisfactions in life or of the happiness to which a well-functioning society conduces (including value judgments connected with “satisfactions” and “well-functioning”).

John Searle purported to show “How to Derive an Ought from an Is”; R. M. Hare replied (articles reprinted in K. Pahel and M. Schiller, eds., *Readings in Contemporary Ethical Theory*, 1970). The outcome of the discussion was that the purported derivation does not work.

In many contexts a sharp distinction between *is* and *ought* is irrelevant; but in some it is important, as in pinning down and possibly clearing up the bases of disagreement about, say, a policy issue. One person may favor a minimum-wage law and another oppose it. Are they disagreeing about the probable consequences of the law, which is a factual issue, or about the acceptability of agreed probable consequences, even weighing side effects against desired effects? Clear discussion requires that the respectability of disagreement about ultimate values not confer respectability on disagreement about issues of fact and logic. (I cite myself reluctantly, but on *is/ought* and Hume, see my *Ethics as Social Science*, Elgar, 2001, especially pp. 17–35, 131–34.)

In short, Hume made distinctions conducive to clear thinking, which in turn is conducive to a free society and personal freedom. Van Dun’s rather gauzy accusations are unwarranted.

—LELAND B. YEAGER

Professor Emeritus of Economics, Auburn University
by e-mail

Frank van Dun replies:

I thank Professor Yeager for taking the trouble to read and to comment on my text on Hume in the October issue of *The Freeman*. Of course, Professor Yeager is wrong to attribute to me the intention to “disparage” Hume’s classical-liberal credentials. I am sure he will agree with me that criticism does not imply disparagement and that skepticism should not stop at the door of the father of modern skeptical philosophy.

I am well aware that Hayek admired and drew inspiration from Hume’s sociopolitical philosophy but, however much I admire both Hayek and Hume and drew inspiration from their writings, I do not think that they provided the strongest intellectual bases for a defense of freedom in the relations and interactions of human persons. To what degree Mises admired Hume is a much more difficult question to answer. He certainly appreciated Hume’s utilitarianism and in particular his seminal essay on the problem of “neutral money,” but then he also chided him and other early British economists for providing an opening for “the enemies of reason.” In a sentence dripping with irony, Mises wrote: “. . . David Hume, the Utilitarians, and the American Pragmatists are certainly not guilty of having exaggerated the power of man to attain truth. It would be more justifiable to blame the philosophy of the last two hundred years for too much agnosticism and skepticism than for overconfidence in what could be achieved by the human mind” (*Human Action*, 1998 Scholar’s Edition, p. 73). Of course, we can only wonder how Hume would have reacted to Mises’s praxeology; if the reactions of his present-day followers are any indication, his too might well have been negative.

I fear Professor Yeager has not understood my remarks on the Is-Ought question. At the risk of writing a piece that is “uncommonly long and gauzy” for *The Freeman*, I went out of my way to stress that it is not possible to derive an ought-statement from an is-statement *in a system of formal logic*, for in such a system “deduction” proceeds by rules of transformation: “is” and “ought” are different forms, and there is no rule applicable to all cases to transform the one into the other that does not risk a loss of truth value. Hume was right about that, just as he was right to say that from an is-statement one cannot formally derive a statement of

causal necessity. One may agree with Professor Yeager that a formal derivation is a “rigorous” derivation, but one need not thereby commit oneself to the view that only a formal derivation can be rigorous.

What I did claim is that human reason is as solidly established on the *ought*-side as it is on the *is*-side of Hume’s famous gap. There is therefore no need to formally derive the one from the other or to consider one of them more basic than the other. It is my view that there are both *is*-statements and *ought*-statements that no human speaker can logically deny, even though the statements themselves are not formal tautologies. (Incidentally, I would argue that Mises’s praxeology, his insistence that it is the explication not of a fanciful idea but of, for humans, the undeniable fact that man acts, is based on the ability of human minds to grasp the limits that their own rational faculties impose on the scope for skepticism. No matter how much a hypothetical superhuman intelligence might disagree, for us humans, human action *is* an ultimate given because for any one of us his or her capacity to act and think is an ultimate given.) Thus where the limitations of Hume’s philosophy compel him to bridge the gap between *is* and *ought* by means of merely synthetic psychological generalizations or contingent habits, other philosophers point to the fact that it is the same mind that generates both of these categories of thought.

Hume’s discussion of *is* versus *ought* and reason versus the passions inaugurated a way of modeling human decision-making that is at once simple (and therefore easy to teach to large classes of students) and in certain contexts plausible, but nevertheless, I would say, false. I do not dispute Professor Yeager’s insistence on the importance of making clear conceptual distinctions, but there is a danger of taking such distinctions as proofs of the existence of different entities. For example, the distinction between “means” and “ends” is an old one, but it does not warrant the hypothesis that there is one entity (“passion”) that posits the ends and another (“reason”) that works out the most efficient means for achieving them. Of course, in most hierarchical organizations, that is effectively what happens: there are those who decide about the ends or goals and then leave it to the experts in their service to come up with the means. However, I would not say that the model applies gener-

ally to how human beings make the decisions that get them through the day, let alone through life. Yet when I look around, I see that “Leave it to the experts” is promoted everywhere, in the schools and in political propaganda (Hume’s “education and the artifice of politicians”) as well as in the no less ubiquitous business propaganda.

From an early age on, people are urged to let others lead their lives for them and to settle for mere want-satisfaction rather than for having lives of their own. Hume may not have foreseen the rise of the cult of the expert, but there is little in his philosophy with which one might criticize it. After all, if reason is and ought to be the slave of your passions then why not dump your slave for another one with better papers? Professor Yeager may not agree, but for me these developments hold an ominous threat to personal freedom as well as to the possibility and sustainability of a free society. Of course, this is too vast a subject to deal with in a reply to a letter.

One last remark: In meetings with other classical liberals I hear hardly a thing about Hume that does not confirm his “classical-liberal credentials” (as Professor Yeager puts it). However, in my usual habitat, both in academia and elsewhere, where classical liberals are an almost invisible minority, most of the people who advance Hume’s or Humean arguments tend to be social democrats or evolutionary socialists. It may be easy to argue that their views do not conform to Hume’s intentions or “philosophical politics” (Duncan Forbes’s felicitous expression), but it is far from easy to argue that Hume’s theory of human nature does not provide support for their views. Hayek’s Hume is not the only Hume we have to reckon with. We had better take account of that.

Is Price Stability a Desirable Goal of Monetary Policy?

Gerald O’Driscoll is correct (“Subprime Monetary Policy,” *The Freeman*, November 2007) in blaming the present mortgage crisis on the fact that investors who have engaged in risky ventures have come to expect

the Fed to bail them out. But to explain the crisis, one must ask why such risky ventures were undertaken in the first place. . . . The problem stems from the fact that the Federal Reserve expanded the money supply earlier and induced investors to undertake risky ventures. . . .

O’Driscoll writes, “In a vibrant market economy with technological innovation and ever-new profit opportunities, monetary policy that *maintains true price stability* in consumer goods *requires* substantial monetary stimulus” (emphasis supplied). Apparently O’Driscoll believes that “price stability” is not only desirable but necessary. . . . Fed policy from the beginning was based on the belief, which apparently O’Driscoll shares, that a prosperous economy *requires* monetary stimulus, that lending must be facilitated by reducing interest rates and making money “easy.” Today’s Fed chairman, whoever he or she may be, engages in a continual juggling act—trying to keep the Fed’s interest/discount rate low to encourage business activity without stimulating higher prices, or raising the Fed’s interest/discount rate without slowing business down. This is inevitable, given the Fed’s goal of maintaining an “elastic currency.”

—BETTINA BIEN GREAVES

by e-mail

Gerald P. O’Driscoll replies:

I appreciate the comments Bettina Bien Greaves made on my article. She misinterprets my argument, however. The remainder of the paragraph from which she quotes, and the following, concluding paragraph, make clear that I am critical of the Greenspan-era policy of the Fed. I point out that it led to asset bubbles and capital misallocation. I predict that the “Greenspan-era gains against inflation will then prove to be only temporary.”

In a more technical version of this paper, I analyze what monetary policy would avoid the problem of asset bubbles and misallocated capital. I conclude that the prices of consumer goods (final output) must be allowed to decline over time. I believe that conclusion is implicit in the final two paragraphs of my *Freeman* article.

Did the Internal-Combustion Engine Make Us Healthy?

I was not aware that *The Freeman* engaged in the publication of speculative fiction. . . . I am referring to the article titled "Thank You, Internal-Combustion Engine, for Cleaning up the Environment," written by Dwight R. Lee (October 2007). There are at least a couple of outright errors in the article. The first of these is the inclusion of typhus, yellow fever, and diphtheria as diseases that could be transmitted via horse manure. . . . Typhus and yellow fever rely upon insect vectors for transmission and diphtheria is transmitted directly from person to person. . . . As to the assertion that it was not changes in the public-health infrastructure: such a bold statement demands at least one reference. A quick search on the Internet calls up a reference to a decrease of ~90% in the death rate from cholera in London based solely on changing the source of water to one which was "quite free from the sewage of London." This was in the 1850s, just a bit before the internal-combustion (IC) engine could influence anything (<http://tinyurl.com/yua75e>).

The speculative fiction aspect of the article is the excursion the author makes into imagining what the world would be like without the IC engine. His straw man is that animal labor would have continued to dominate the world. I am disappointed that he appears to be wholly unaware of the existence of the steam or external-combustion (EC) engine. The author might be served to look up the work of James Watt, Robert Fulton, and George Stephenson. This list is extremely cursory. As an example of the competition to the IC engine, please note that the Stanley Motor Carriage Company produced a line of vehicles sold to the public and often referred to as "Stanley Steamers." This is relevant not only because the Stanley Steamer was initially more successful than the IC-engine automobile, but also in regards to the aspect of pollution. . . .

—MARK E. ANDERSON
by e-mail

Dwight Lee responds:

Mark E. Anderson faults me for writing "speculative fiction," wrongly portraying the connection between horse manure and certain diseases, not understanding the importance of public-health infrastructure, and not considering alternatives to the internal-combustion engine.

I do not claim much medical knowledge, but I am under the impression that filth is a health hazard whether it transmits diseases directly or through other agents, such as insects, rats, and people. Certainly horse manure was a major contributor to the filth people were exposed to before the internal-combustion engine greatly reduced the horse population. The quotation in my article from Robert Fogel seems adequate to convince one that the horse manure eliminated by internal-combustion engines was a greater health hazard than the exhaust from those engines.

I never claim, as Mr. Anderson states, that public-health infrastructure was not responsible for reducing certain diseases or health risk in general. Clearly it did, and I should have explicitly acknowledged that fact. But it seems reasonable that reducing the filth in the environment, which the public-health infrastructure had to deal with, deserves much of the credit for the continuing drop in numerous diseases that occurred as reliance on the internal-combustion engine expanded.

Mr. Anderson seems to believe my biggest mistake is in assuming that the choice was between either the internal-combustion engine or continuing with the horse. It is true that I don't mention other technologies, such as the steam engine, which might have done almost as much to improve the environment as the internal-combustion engine if the latter had never come along. But the swimmer who reaches the drowning child and pulls him to safety gets credit for the rescue even if, in his absence, another would have saved the child. Also, by giving credit to the internal-combustion engine for its contribution to the environment, I avoided getting even deeper into the type of "speculative fiction" that Mr. Anderson faults me for. 

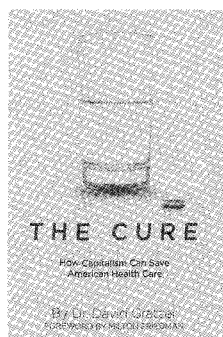
Book Reviews

The Cure: How Capitalism Can Save American Health Care

by David Gratzer

Encounter Books • 2006 • 233 pages • \$25.95

Reviewed by Jane M. Orient



David Gratzer learned one of his most important lessons in medical school on his way to class. He had to wind his way around the gurneys parked in corridors of the emergency department, where elderly patients, stinking of sweat and urine, had been waiting as long as five days for a bed. That destroyed his illusions about what he, like most Canadians, had been taught was the best-run health-care system in the world.

I could identify with the author because I had a similar epiphany in 1970 when volunteering to help out in the emergency room at Columbia-Presbyterian Hospital in New York as a first-year medical student. It too was chaotic, but we did not have patients waiting for days for beds; we did not use the Canadian global budget to put a lid on total expenditures, leading to rationing by limiting supply. What became obvious to me was that the “compassionate” “liberal” ideology of wealth redistribution did not and could not help the social problems that led to most of the ER traffic.

Since 1970 more and more Americans have been funneled into the single-payer systems called Medicare and Medicaid. The waiting rooms at ERs in private hospitals are coming to resemble those of 1970s public hospitals in the inner city, while the inner-city hospitals have become even worse. Just as we’re starting to experience the type of stress so common in Canada, the pressure to finish the job of socializing American medicine grows ever more intense. While our remedies make the patient sicker, reformers suggest applying more leeches. It’s time for regular people to take a field trip to the ER.

Gratzer does a good job of explaining some basic economics. It’s all encapsulated in his graph: “Out-of-Pocket Share Falls and Per Capita Spending Climbs.” The diagnosis is too much third-party payment, not too little.

Doing away with the free-market price mechanism, essential for bringing supply and demand into equilibrium, inevitably leads to “bureaucratic displacement.” Gammon’s Law—that in a bureaucratic system, increase in expenditure leads to a fall in production—was developed by a British physician in the context of the National Health Service. Milton Friedman applied it to American hospitals, as Gratzer recounts.

Gratzer explains many important issues, such as the role of government regulation in increasing the cost of insurance as well as of prescription drugs. He debunks well-worn myths, such as the claim that infant mortality is less in countries with socialized medicine. He outlines reforms that would make the situation better rather than worse: expanded health savings accounts, permitting the purchase of out-of-state insurance, and tax equity.

An important contribution of the book is explaining why the laws of economics don’t seem to apply in medical care. For example, improved technology generally leads to lower prices, not higher ones as in medicine. Basically, “America doesn’t really have a market for health *care*, it seems, merely a market for health *insurance*.” The customer—the one spending the money—isn’t the person benefiting directly from the service. Thus normal market processes, such as the role of self-interest, are inverted.

Anyone who understands Gratzer’s account of the government’s role in the current mess will be hard pressed to see it as a potential savior. Consider a couple of paradoxes. Medicaid was supposed to help the poor, but one of its most expensive roles is to serve as “inheritance insurance” for the wealthy. One of the fastest-growing areas of legal practice involves helping the affluent qualify for Medicaid long-term care. And Medicare was supposed to protect the elderly from being financially devastated by medical expenses. Although it covers many small bills, it leaves beneficiaries exposed to potentially catastrophic out-of-pocket expenses. It’s the opposite of sound insurance.

Gratzer fills in what the American media usually omit: the uncounted costs of prolonged pain and disability for Canadians trapped on waiting lists. Allowing people to use their own money to improve their situation has been considered un-Canadian. Fortunately, the situation is changing. In a case involving what Gratzer calls “the hip that changed the world,” the Supreme Court of Canada held in favor of a Montreal physician, Jacques Chaoulli, who took on the system virtually single-handed.

Privatization and free-market reforms are breaking out in all those countries that leftists applaud for having “universal” health care—that is, universally bankrupt, mediocre, and overburdened medical systems. Gratzer looks at Sweden, South Africa, Finland, and Germany, among others.

Americans should benefit from Gratzer’s experience in Canada as well as his mastery of economics. We need to avoid descending further into the chasm of medical-care socialism. At some point, the vortex of socialism could become like a black hole, from which no escape is possible.

Gratzer’s book is a valuable contribution to the struggle to insure against that outcome. 

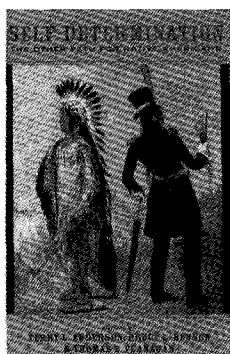
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Self-Determination: The Other Path for Native Americans

Edited by Terry L. Anderson, Bruce L. Benson, and Thomas F. Flanagan

Stanford University Press • 2006 • 331 pages • \$35.00

Reviewed by William L. Anderson



While driving across the American west in 2006, I passed through Indian reservations, their desert landscapes dotted with shanties, trailers—and casinos. It was a classic picture of wealth surrounded by poverty, a comparison that socialists often love to make when denigrating capitalism.

Yet, as former secretary of the interior James Watt so famously said 25 years ago, one need not go to socialist countries to observe failures of socialism; just go to the reservation. Unfortunately, the truth about Native Americans is as unacceptable now as it was then.

The myths surrounding Native Americans have attracted people who believed Indians were communalistic people who lived in perfect harmony with their natural environment. The Oscar-winning movie *Dances with Wolves* helped to popularize this view of Native Americans, whose idyllic way of life was destroyed by the invasion of whites who, as the main character claimed, “had no soul.” The private-property ethos of these invaders ultimately resulted in Native Americans’ being shunted to reservations, where they lost their way of life, while whites plundered the environment and brought death, chaos, and the near-extinction of the buffalo.

While such beliefs may satisfy the romantic notions of modern political correctness, they are not true. Some important scholars not only are out to set the record straight, but also present alternatives for Native Americans that can give them a better life than exists today on the reservation. Terry Anderson, Bruce Benson, and Thomas Flanagan have edited *Self-Determination: The Other Path for Native Americans*. It is no accident that they use the term “the other path”; that is what Hernando de Soto urged South Americans to take instead of the “shining path” of communism and socialism.

Anderson is one of the founders of the Property and Environment Research Center, which promotes “free-market environmentalism” (that is, environmental solutions sans the heavy hand of government coercion that goes with statist environmentalism). He long has researched the history of Native Americans and has found many examples of private property ownership among them, ownership patterns that existed long before the arrival of white Europeans. The contributions of Benson and Flanagan to law, property rights, and other such subjects are well known in the economics profession.

The book seeks to do two things, and it does them successfully. First, it seeks to set the record straight about Native Americans and explode the socialistic and environmental mythology that surrounds this subject.

As Nobel Prize-winning economist Douglass North writes in the introduction:

The history of Native Americans has been fundamentally colored by the perceptions—or the belief systems, if you will—of the writers. This is true of all history, but is particularly so in this case. Whether written as a story of conquest, exploitation, paternalism, or greed, it deserves a better story—one that tries to comprehend the complex evolution of Native Americans from their lifestyles before the advent of European occupation.

Second, the book outlines strategies by which Native Americans can break free of the governmental paternalism that not only robs them of their individuality, but also leaves them in poverty and ruin. In a series of ten essays, from “False Myths and Indigenous Entrepreneurial Strategies” to “Property Rights and the Buffalo Economy of the Great Plains” to “Indian Casinos: Another Tragedy of the Commons,” the various writers deal with the real history of the indigenous peoples of North America and point toward another path for those who, in North’s words, deserve “a better story.”

While the briefness of this review keeps me from examining each essay, I wish to single out the first two. The first explodes the myths about Native Americans, and the second looks at the near-eradication of the buffalo from the Great Plains. Craig S. Galbraith, Carlos L. Rodriguez, and Curt H. Stiles in “False Myths” lay out the following viewpoints, and then debunk them with historical facts:

- Native Americans were purely communalistic;
- Indigenous populations were collectivist in economic relationships;
- Indigenous people were the original “environmentalists.”

These myths, they point out, are modern in orientation and reflect a romantic view that came more from our own cultural revolution than historical fact.

Likewise, in his chapter on the “buffalo economy,” Benson notes that Indian tribes already had mostly eradicated the buffalo from the Great Plains even before the onslaught of white settlers and the famed buffalo hunters.

For those who believe that Native Americans really do deserve better than the myths of communalism, this is a book worth reading.



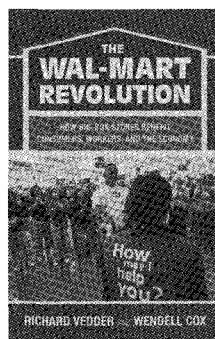
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The Wal-Mart Revolution

By Richard Vedder and Wendell Cox

American Enterprise Institute • 2006 • 199 pages • \$20.00 paperback

Reviewed by George Leef



Without a doubt, Wal-Mart is the most demonized business in American history. The company is widely accused of mistreating and underpaying its workers, ruining communities, aggravating the trade deficit, and that all-purpose sin, “putting profits before people.” No Democratic candidate for national office dares to utter anything but condemnation for fear of appearing “soft” on this horrible scourge.

And yet, despite the constant stream of attacks, the firm attracts vast numbers of customers every day. Wal-Mart keeps growing, and whenever it opens a new store—even in “blue” areas of the country—it is thronged with job applicants.

So what’s going on? Has a corporate monster managed to hoodwink the masses to keep them from seeing its villainy? Or are the critics trying to create an enemy to hate, as in 1984, for their own purposes?

In their book *The Wal-Mart Revolution*, economist Richard Vedder and public-policy consultant Wendell Cox take a clear, unemotional look at Wal-Mart, beginning with its rise from a tiny Arkansas retailer to America’s largest company, and then examining the charges made against it. To summarize the authors’ conclusions: Wal-Mart has been successful because its founders figured out how to satisfy consumers better than their competitors, and the critics’ case against it is much ado about almost nothing.

Regarding Wal-Mart’s efficiency, Vedder and Cox

compare founder Sam Walton with that business genius of a century ago, John D. Rockefeller of Standard Oil fame. Both were highly innovative, hard-working, self-made men who set a personal example for their employees. Both knew how to get the most value for a dollar. Both succeeded by cutting prices to expand their customer bases. And both opposed unionization of their operations, seeing it as the enemy of efficiency. The combination of large profits and unwillingness to cave in to demands for collective bargaining made both Standard Oil and Wal-Mart targets for a swarm of egalitarian social critics.

The middle chapters of the book are devoted to an analysis of the charges that Wal-Mart is a social menace. Does the company underpay its workers? Vedder and Cox show that Wal-Mart employees are paid comparably with other retail workers. As to the comparison that is often drawn with big-box rival Costco (which doesn't resist unionization and therefore escapes criticism), the authors note that while the average compensation for Costco workers is somewhat higher, that is accounted for by the fact that many Wal-Mart stores are located in rural areas where wages are lower.

What about benefits, particularly health insurance? The critics say that Wal-Mart should give most or all of its workers health-insurance coverage, but doesn't. The greedy company is therefore a drain on taxpayers since some of its employees who don't have company insurance have to turn to Medicaid. In response, Vedder and Cox observe that there are also many workers at other retailers who don't have health-insurance coverage; furthermore, many Wal-Mart employees neither want nor need health insurance through the company. They prefer to take their compensation in other forms. Also, the critics ignore two very substantial benefits employees receive—profit-sharing and employee discounts.

If workers felt that Wal-Mart was underpaying them, the company would have trouble maintaining its workforce. It doesn't.

Another emotion-laden attack against Wal-Mart is that when it opens a new store the result is often the demise of many small mom-and-pop stores in the area. That can happen, of course, when any modern store opens. Unless we want laws to prevent customers from preferring new and efficient things to old and ineffi-

cient things, this "problem" is unavoidable. Again, Wal-Mart is being singled out for the crime of competing too well.

It is no coincidence that the rabid Wal-Mart critics come mostly from labor unions. Unions represent many workers in competing retailers, and those companies, beset by inefficient union work rules, fare poorly against Wal-Mart. The supposedly high-minded campaign against Wal-Mart is actually driven by self-interest.

Vedder and Cox are not Wal-Mart fans, though. They merely argue that the company should not be treated differently than other businesses. They come out firmly against tax breaks and other incentives to lure Wal-Mart (or any other employer) to an area. They're also against Wal-Mart (and any other business) seeking cheap real estate through eminent domain.

Finally, they criticize the company's recent public-relations efforts as foolish attempts to "appease the unappeasable." In recent years, Wal-Mart spokesmen have endorsed, for example, a higher legal minimum wage. The authors give that two thumbs down. They're rightly appalled at the spectacle of successful capitalists trying to cozy up to the enemies of the free market by advocating increasing governmental coercion in voluntary business relationships.



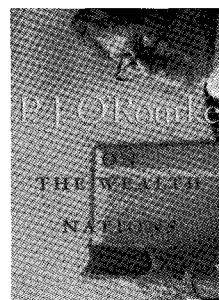
George Leef (georgeleef@aol.com) is book review editor of *The Freeman*.

On the Wealth of Nations

by P.J. O'Rourke

Atlantic Monthly • 2007 • 242 pages • \$21.95

Reviewed by Raymond J. Keating



Here's a great idea for a book: Have the leading libertarian, free-market humorist and satirist P.J. O'Rourke show readers why *An Inquiry into the Nature and Causes of the Wealth of Nations* ranks as a book that changed the world. Whoever came up with that idea at the publishing house deserves a bonus.

After all, few books have had such a monumental and positive impact on mankind as Adam Smith's *Wealth of Nations*. But anyone who has read this

weighty tome also understands that Smith offered little evidence of a sense of humor. So, enter O'Rourke.

P.J. O'Rourke's *On the Wealth of Nations* is well worth reading. It's fun—with some laugh-out-loud observations one expects from him—and sometimes insightful. However, it also falls glaringly short on occasion.

O'Rourke grasps the basics from Smith. He observes in the first chapter, "Smith illuminated the mystery of economics in one flash: 'Consumption is the sole end and purpose of all production.' There is no mystery. Smith took the *meta* out of *physics*. Economics is our livelihood and just that." A bit later O'Rourke continues: "Even intellectuals should have no trouble understanding Smith's ideas. Economic progress depends upon a trinity of individual prerogatives: pursuit of self-interest, division of labor, and freedom of trade." He declares that the essence of Smith's thinking on the economy is: "It's none of our business."

O'Rourke does an able job in laying out the essentials of Smith in these areas, including the importance of property rights and why the private sector works better than government. On government planning, for example, he pithily proclaims: "Smith's strategy was to convince the people who guide the world's economy to get lost."

It should be noted that this is not just a book about *The Wealth of Nations*. Also featured is an entire chapter on Smith's earlier book, *The Theory of Moral Sentiments*. O'Rourke realizes that one cannot fully understand Smith and *The Wealth of Nations* without also grasping what he had to say in *The Theory of Moral Sentiments*.

Indeed, O'Rourke's chapter on *Sentiments* perhaps ranks as the best in the book. He ably explains the roles that sympathy and imagination play in Smith's thinking on morality. O'Rourke notes, "Adam Smith personified these conscious imaginative judgments and named our brain's moral magistrate the 'Impartial Spectator.'" Taken together, O'Rourke explains, "It's a mistake to read *The Wealth of Nations* as a justification of amoral greed. *Wealth* was Adam Smith's further attempt to make life better."

But there are areas where O'Rourke is muddled. That's most seriously the case when it comes to money. For example, O'Rourke writes that Smith "realized

that money was not a government asset, but a government liability." Wrong—money is neither a government asset nor a liability.

On trade deficits, O'Rourke correctly notes Smith's arguments against the mercantilists' emphasis on the balance of trade, and rightly bemoans the fact that those notions persist today, especially in politics. But it's unclear if the author gets the whole story straight, with money again perhaps causing some confusion. For example, O'Rourke notes that trade deficits mean that money is sent overseas and therefore "American IOUs are piling up." While acknowledging that "an international 'current account deficit' is not comparable to a private debt," he can't shake the mistaken notion that it is some kind of debt. In reality, a U.S. current account deficit usually reflects a growing U.S. economy resulting in more purchases of imports and/or increased investment from abroad.

Smith's simplest declaration on money was: "The sole use of money is to circulate consumable goods." O'Rourke should have quoted that line, offered an amusing anecdote, and left it at that. He also quoted Smith's statement that "Nothing can be more absurd than this whole doctrine of the balance of trade." Again, it would have been better to stop right there.

Adam Smith can be a joy and a challenge. Does P.J. O'Rourke provide some help in better understanding Smith in *On the Wealth of Nations*? Most of the time, the answer is yes, but not always.

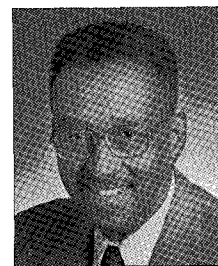
Without a doubt, though, P.J. O'Rourke is funnier than Adam Smith. O'Rourke also is funnier than today's economists. Don't get me wrong. There are some very amusing economists out there. Just flip on CNBC most days. The difference is that O'Rourke means to be funny. Those economists do not. We laugh *with* O'Rourke. But we laugh *at* those economists because their misguided pronouncements on how the economy works reveal a drift far from the fundamentals laid out by Adam Smith. So, what should the reader do? It's simple. Read Adam Smith, read P.J. O'Rourke, and change the channel when one of those hilarious economists comes on television.



Contributing editor Raymond Keating (rjkenewsday@aol.com) is chief economist for the Small Business & Entrepreneurship Council and a columnist with *Newsday*.

Economics and Property Rights

BY WALTER E. WILLIAMS



Economic theory does not operate in a vacuum. Institutions, such as the property-rights structure, do not change economic theory but influence how the theory manifests itself. Similarly, the law of gravity is not repealed when a parachutist floats gently down to earth. The parachute simply determines how the law of gravity manifests itself. Failure to recognize the effect and role that different property-rights structures play in the outcomes we observe leads to faulty analysis.

Think about several questions. Which oyster bed will yield larger, more mature oysters—a publicly owned or privately owned bed? Why is it that herds of cows are not threatened with extinction while buffalo were? Who will care for a house better—a renter or an owner? Finally, why are some societies richer than others?

The answer to each question has to do with the property-rights structure, whether property rights are held privately or communally. When property rights are held privately, the person who is deemed the owner has certain rights that he expects will be enforced. Among those rights are the right to keep, acquire, use, exclude from use, and dispose of property as he deems appropriate in a manner that does not infringe similar rights held by others. The owner also has the right to transfer title to the property and otherwise benefit from its use. When rights to property are held communally, such a bundle of rights does not exist. In general, the key difference between privately and communally held property rights is that individuals do not have the right to exclude others from use, and they do not have the right to transfer title.

Let us turn to our questions. In a publicly or communally owned oyster bed, everyone has a claim. For a

person to assert his claim, he has to capture the oysters. This leads to overfishing because the person who tosses back an immature oyster does not benefit himself. He benefits someone else who will keep the oyster.

It's a different story with a privately owned oyster bed. The owner need not capture the oysters in order to assert his claim and can allow the oysters to mature.

It's the same principle with buffalo and other wildlife that's publicly owned. However imperfectly, governments attempt to solve this property-rights problem with licenses, fishing and hunting seasons, and limits on catch and size. The difference in outcomes, based on the property-rights structure, is a no-brainer. As Thomas Sowell writes in *Knowledge and Decisions*, "It is precisely those things which belong to 'the people' which have historically been despoiled—wild creatures, the air, and waterways being notable examples. This goes to the

heart of why property rights are socially important in the first place. Property rights mean self-interested monitors. No owned creatures are in danger of extinction. No owned forests are in danger of being leveled. No one kills the goose that lays the golden egg when it is his goose."

Aristotle said, "What is common to many is taken least care of, for all men have greater regard for what is their own than for what they possess in common with others." What he is saying is that private property rights force people to internalize externalities, which is just a fancy way of saying that a person's wealth is held hostage to his doing the "socially responsible" thing—

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wisely using the planet's scarce resources. Private property rights induce the homeowner to take into account the effect of his current use of the property on its future value. That is why we expect a homeowner to give better care to a house than a renter. A homeowner has a greater stake in what a house is worth ten or 20 years later. An owner would more likely make sacrifices and take the kind of care that lengthens the usable life of the house. He reaps the reward from doing so, or pays the penalty for not doing so. Owners require security deposits against damage to make renters share some of their interests in the property.

Restriction on Profits

A completely ignored aspect of restricting private property rights is the restriction on the right to profits. Pretend you own a firm and you can hire one of two equally capable secretaries. The pretty secretary demands \$300 a week, while the homely secretary is willing to work for \$200. If you hired the homely secretary, your profits would be \$100 greater. But what if there were a 50 percent profit tax? The tax would reduce your profit, thereby reducing your cost of discriminating against the homely secretary. Before the profit tax, the cost of discriminating against the homely secretary would be \$100. After the profit tax, that discrimination would cost you only \$50. Discriminating against the homely secretary would be consistent with the predictions of the law of demand: the lower the cost of doing something, the more people will do it. Hiring the pretty secretary would put the profits in a nonmonetary and hence nontaxable form. Wherever private property rights to profits are attenuated, we expect more choices to be made on the basis of non-economic factors, such as race and other physical attributes. That's especially the case where there is no profit motive at all, such as non-profit entities like government and universities.

One might find the previous statement puzzling knowing that government and universities have preferential hiring policies in favor of racial minorities. There

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is no puzzle at all. When it was politically expedient, government and universities were the leaders in discrimination against racial minorities. Now that it's politically expedient to discriminate in favor of racial minorities, government and universities are in the forefront. For example, in 1936, there were only three black Ph.D. chemists employed by all the white universities in the United States, whereas 300 black chemists were employed by private industry. In government, blacks were only 1 percent of nonpostal civil-service workers in 1930. Interestingly, when blacks finally made their entry into white universities, much of it was in the moneymaking part of the university—sports.

Economic growth is affected by the property-rights structure. Several annual studies measure variables such as constitutional enforcement, freedom of contract, and the protection of property rights to compare the level of freedom across countries over time and estimate the relationship between freedom and prosperity. They unequivocally conclude that economic growth is positively related to the security of property rights. The 2007 edition of *The Economic Freedom of the World* found that nations in the top quartile of economic freedom have an average per-capita GDP of \$26,013, compared to \$3,305 for those nations in the bottom quartile. The top quartile has an average per-capita economic growth rate of 2.25 percent, compared to 0.35 percent for the bottom quartile. In some years, some countries in the bottom quartile experienced negative growth.

Even if private property rights did not produce greater wealth, prosperity, and efficient resource allocation, they would be morally superior to any alternative because they recognize the sanctity of the individual. As John Adams put it, "Property is surely a right of mankind as real as liberty," adding, "The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence."



“The art of government is the organization of idolatry.

The bureaucracy consists of functionaries;
the aristocracy, of idols; the democracy, of idolaters.

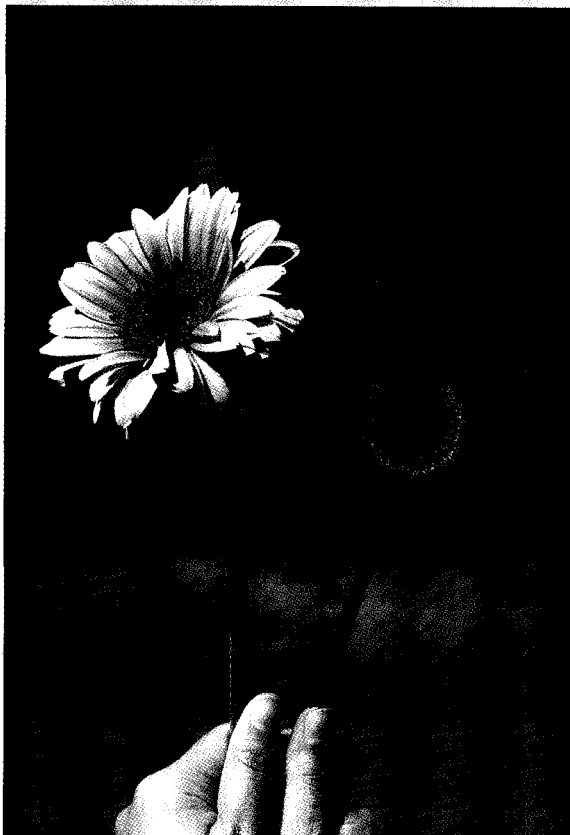
The populace cannot understand the bureaucracy:
it can only worship the national idols.”

—George Bernard Shaw (1856–1950),
Man and Superman



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